रजिस्ट्री सं. डी. एल. (एन) 04/0007/2003–05 REGD. NO. D. L. (N) 04/0007/2003—05

भारत का राजपत्र
The Gazette of India

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सं. 16] नई दिल्ली, अप्रैल 13—अप्रैल 19, 2014, शनिवार/चैत्र 23—चैत्र 29, 1936
No. 16] NEW DELHI, APRIL 13—APRIL 19, 2014, SATURDAY/CHAITRA 23—CHAITRA 29, 1936

भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications Issued by the Ministries of the Government of India (Other than the Ministry of Defence)

वित्त मंत्रालय
(वित्तीय सेवाएं विभाग)

नई दिल्ली, 2 अप्रैल, 2014

का.आ. 1202.—भारतीय निर्यात-आयात बैंक अधिनियम, 1981 (1981 का 28) की धारा 6 की उप-धारा (1) के खंड (ड) के उप-खण्ड (i) के अनुसरण में केन्द्रीय सरकार, एतद्द्वारा, श्री गुरदयाल सिंह संधु, सचिव, वित्तीय सेवाएं विभाग, वित्त मंत्रालय, नई दिल्ली को अगले आदेशों तक, श्री राजीव टकरु के स्थान पर भारतीय निर्यात-आयात बैंक (एग्जिम बैंक) के निदेशक मण्डल में निदेशक के रूप में नामित करती है ।

[फा. सं. 9/16/2012-आई एफ-I]
अशोक अग्रवाल, अवर सचिव

MINISTRY OF FINANCE
(Department of Financial Services)

New Delhi, the 2nd April, 2014

S.O. 1202.—In pursuance of sub-clause (i) of clause (e) of Sub-section (1) of Section 6 of the Export Import Bank of India Act, 1981 (28 of 1981), Central Government hereby nominates Shri Gurdial Singh Sandhu Secretary, Departmental of Financial Services, Ministry of Finance, New Delhi as a Director on the Board of Directors of Export Import Bank of India with immediate effect and until further orders vice Shri Rajiv Takru.

[F. No. 9/16/2012-IF-I]
ASHOK AGGARWAL, Under Secy.

कार्मिक, लोक शिकायत तथा पेंशन मंत्रालय
(कार्मिक और प्रशिक्षण विभाग)

शुद्धिपत्र

नई दिल्ली, 3 अप्रैल, 2014

का.आ. 1203.—कृपया इस विभाग की अधिसूचना संख्या 225/25/2009-एवीडी.II दिनांक 15 जुलाई, 2010 में "आरसी 47(ए)/96-पीएटी" के पश्चात् "आरसी सं. 68 (ए)/96-पीएटी" को भी पढ़ा जाए ।

[फा. सं. 225/25/2009-एवीडी-II]
राजीव जैन, अवर सचिव

MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSIONS
(Department of Personnel and Training)

CORRIGENDUM

New Delhi, the 3rd April, 2014

S.O. 1203.—In the Notification No. 225/25/2009-AVD.II dated 15th July, 2010 of this Department "RC.No. 68(A)/96/PAT" be also read after "RC.47(A)/96-PAT".

[F. No. 225/25/2009-AVD-II]
RAJIV JAIN, Under Secy.

उपभोक्ता मामले खाद्य एवं सार्वजनिक वितरण मंत्रालय

(उपभोक्ता मामले विभाग)

(भारतीय मानक ब्यूरो)

नई दिल्ली, 8 फरवरी, 2014

का.आ. 1204.—भारतीय मानक ब्यूरो (प्रमाणन) विनियम, 1988 के विनियम, 4 के उपविनियम 5 के अनुसरण में भारतीय मानक ब्यूरो एतद्द्वारा अधिसूचित करता है कि जिनके विवरण नीचे अनुसूची मे दिए गए हैं को लाइसेंस प्रदान किए गए हैं :—

अनुसूची

क्रम सं.	लाइसेंस सं.	स्वीकृत करने की तिथि वर्ष माह	लाइसेंसधारी का नाम एवं पता	भारतीय मानक का शीर्षक	भा मा संख्या	भाग	अनु	वर्ष
1	2	3	4	5	6	7	8	9
01.	2838976	02 जनवरी, 2014	मैसर्स पी.सी.केब प्लॉट नं. 7, सर्वे नं. 257, आकाश स्टील के पास, जैन मेन्युफेक्चरर्स के पास, राजकोट गोंडल हाईवे, तालुका कोटडा सांगानी सापर, जिला राजकोट, गुजरात-360024	1100 वोल्ट तक की कार्य वोल्टता के लिए पी वी सी रोधित केवल	694	0	0	1990
02.	2839170	03 जनवरी, 2014	मैसर्स वेलजल पम्प प्राईवेट लि. शेड नं. 1, सर्वे नं. 39, खोडल एस्टेट, प्रशांत फाउन्ड्री के पीछे, गोंडल रोड हाईवे, वावडी, जिला राजकोट, गुजरात-360005	खुले कुएं के लिए निमज्जय पम्पसेट	14220	0	0	1994
03.	2839271	03 जनवरी, 2014	मैसर्स नर्मदा इन्डस्ट्रीज शेड नं. 1-2, सहजानंद इन्डस्ट्रीयल एस्टेट, कीशान गौ-शाला के पास, मुरलीघर वेईट ब्रीज के पीछे, एन . एच . 8-B, जिला राजकोट, गुजरात-360003	खुले कुएं के लिए निमज्जय पम्पसेट	14220	0	0	1994
04	2839877	06 जनवरी, 2014	मैसर्स मानसी ज्वेलर्स डोक्टर स्ट्रीट, वासी तलाव, महुवा, जिला भावनगर, गुजरात-364290	स्वर्ण एवं स्वर्ण मिश्रधातुएं, आभूषण/ शिल्पकारी शुद्धता एवं मुहरांकन - विशिष्टि	1417	0	0	1999
05	2840256	07 जनवरी, 2014	मैसर्स सोनी संजयकुमार जयंतीलाल मस्जीद रोड, वढवान, जिला सुरेन्द्रनगर, गुजरात-363030	स्वर्ण एवं स्वर्ण मिश्रधातुएं,आभूषण/ शिल्पकारी शुद्धता एवं मुहरांकन - विशिष्टि	1417	0	0	1999

1	2	3	4	5	6	7	8	9
06.	2840357	07 जनवरी, 2014	मैसर्स कदम्ब ज्वेलर्स 0, सतजल शोपींग सेन्टर, देना बेंक के पास, ढासा जंक्शन, भावनगर, गुजरात-364270	स्वर्ण एवं स्वर्ण मिश्रधातुएं, आभूषण/ शिल्पकारी शुद्धता एवं मुहरांकन - विशिष्टि	1417	0	0	1999
07.	2842159	13 जनवरी, 2014	मैसर्स श्री घ्येय मीनरल राजकोट हाईवे, सी एन जी पम्प के पास, बाय पास सर्कल, खेराली, तालुका वढवान, जिला सुरेन्द्रनगर, गुजरात-363001	पैकेजबंद पेय जल (पैकेजबंद प्राकृतिक मिनरल जल के अलावा)	14543	0	0	2004
08.	2842260	13 जनवरी, 2014	मैसर्स शुभलक्ष्मी ज्वेलर्स शोप नं. 1, ग्राउन्ड फ्लॉर, परीमल चोक, डी एन्ड 1 एक्स्यु, वाघावाडी रोड, तखतेश्वर, जिला भावनगर, गुजरात	स्वर्ण एवं स्वर्ण मिश्रधातुएं, आभूषण/ शिल्पकारी शुद्धता एवं मुहरांकन - विशिष्ट	1417	0	0	1999
09.	2842664	15 जनवरी, 2014	मैसर्स हरीओम एग्रो इन्डस्ट्रीज अटीका, नेहरूनगर मेइन रोड, ढेबर रोड (साउथ), राजकोट, गुजरात-360002	साफ ठन्डे पानी के लिए ऊर्ध्व टर्बा इन मिश्रित और अश्रीय प्रवाह पंपो की विशिष्टि	1710	0	0	1989
10.	2844870	21 जनवरी, 2014	मैसर्स ओमकार ज्वेलर्स शास्त्री रोड, सीटी सर्वे नं. 65, शोप नं. 3, अंजार, जिला कच्छ, गुजरात 370110	स्वर्ण एवं स्वर्ण मिश्रधातुएं, आभूषण/ शिल्पकारी शुद्धता एवं मुहरांकन - विशिष्टि	1417	0	0	1999
11.	2845468	23 जनवरी, 2014	मैसर्स हदीद इस्पात सर्वे नं. 148/1/1, सीहोर घांघली रोड, गॉव घांघली, तालुक सीहोर जिला भावनगर, गुजरात-364240	सामान्य संरचना इस्पात हेतु पुनर्वेल्लन के लिये कार्बन ढलवा इस्पात इंगट, बिलेट, ब्लूम और स्लैब की विशिष्टि	2830	0	0	2012
12.	2845771	23 जनवरी, 2014	मैसर्स वेलजल पम्प प्राईवेट लिमिटेड शेड नं. 1, सर्वे नं. 39, खोडल एस्टेट, प्रशांत फाउन्ड्री के पीछे, गोंडल रोड हाईवे, वावडी, जिला राजकोट, गुजरात-360005	निमज्जनीय पम्प सेट	8034	0	0	2002
13.	2847169	27 जनवरी, 2014	मैसर्स हरीओम ज्वेलर्स शोप नं. 101, जेनीली शोपींग सेंटर के पास, अंबा आर्केड, एम.जी. रोड, जिला जुनागढ़, गुजरात-362001	स्वर्ण एवं स्वर्ण मिश्रधातुएं,आभूषण/ शिल्पकारी शुद्धता एवं मुहरांकन - विशिष्टि	1417	0	0	1999

1	2	3	4	5	6	7	8	9
14.	2847270	27 जनवरी, 2014	मैसर्स रंगनाथ ज्वेलर्स छाथीबारी रींग रोड, नगरचकला, भुज, जिला कच्छ, गुजरात-370001	स्वर्ण एवं स्वर्ण मिश्रधातुएं, आभूषण/ शिल्पकारी शुद्धता एवं मुहरांकन - विशिष्टि	1417	0	0	1999
15.	2847977	30 जनवरी, 2014	मैसर्स हरीहर पम्पस धोकीया मोटस के पास, रेलवे क्रोसींग के पास, नेशनल हाइवे 8 बी, गोंडल हाइवे, कोथारीया सोल्वेट, कोथारीया, जिला राजकोट, गुजरात-360004	निमज्जनीय पम्प सेट	8034	0	0	2002
16.	2848777	31 जनवरी, 2014	मैसर्स टोपलेन्ड पम्पस प्राईवेट लिमिटेड प्रशांत फाउन्डरी के पीछे, उमाकांत पंडित उधोगनगर, मवडी प्लॉट, राजकोट, गुजरात 360004	खुले कुएं के लिए निमज्जय पम्पसेट	14220	0	0	1994

[सं. केन्द्रीय प्रमाणन विभाग /13:11]

एम. राधाकृष्णा, वैज्ञानिक 'एफ' एवं प्रमुख

MINISTRY OF CONSUMER AFFAIRS, FOOD AND PUBLIC DISTRIBUTION

(Department of Consumer Affairs)

(BUREAU OF INDIAN STANDARDS)

New Delhi , the 8th February, 2014

S.O. 1204.—In pursuance of sub-regulation (5) of regulation 4 of the Bureau of Indian Standards (Certificate) Regulations, 1988, the Bureau of Indian Standards, hereby notifies the grant of licences particulars of which are given below in the following schedule:

SCHEDULE

Sl. No.	Licence	Grant Date	Name and address of the Party	Title of the Standard	IS No.	Part.	Sec	Year
1	2	3	4	5	6	7	8	9
01.	2838976	02/01/2014	M/s P.C.CAB Plot No. 7, Survey No. 257, Near Aakash steel, Near Jain Manufactures, Rajkot-Gondal Highway, Taluk-Kotda sangani, Shapar, District : Rajkot, Gujarat-360024	PVC Insulated cables for working voltages upto and including 1100 V	694	0	0	1990

1	2	3	4	5	6	7	8	9
02.	2839170	03/01/2014	M/s WELLJAL PUMP PRIVATE LIMITED Shed No. 1, Survey No.39, Khodal Estate, Behind Prashant Foundry, Gondal Road Highway, Vavdi, District : Rajkot, Gujarat-360005	Open well Submersible Pumpsets - Specification	14220	0	0	1994
03.	2839271	03/01/2014	M/s NARMADA INDUSTRIES Shed No. 1-2, Sahjanand Industrial Estate, Near Kishan Gau-Shala, Behind Murlidhar Weight Bridge, N.H. 8-B, District : Rajkot, Gujarat-360003	Openwell Submersible Pumpsets- Specification	14220	0	0	1994
04.	2839877	06/01/2014	M/s MANSI JEWELLERS Doctor Street, Vasi Talav, Mahuva, District : Bhavnagar, Gujarat-364290	Gold and Gold Alloys, Jewellery/Artefacts- Fineness and Marking- Specification	1417	0	0	1999
05.	2840256	07/01/2014	M/s SONI SANJAY KUMAR JAYANTILAL Masjid Road, Wadhwan, District : Surendranagar, Gujarat-363030	Gold and Gold Alloys, Jewellery/Artefacts - Fineness and Marking - Specification	1417	0	0	1999
06.	2840357	07/01/2014	M/s KADAMB JEWELLERS 0, Satjal Shopping Centre, Near Dena Bank, Dhasa Junction, Bhavnagar, Dhasa, District : Bhavnagar, Gujarat-364270	Gold and Gold Alloys, Jewellery/Artefacts - Fineness and Marking - Specification	1417	0	0	1999
07.	2842159	13/01/2014	M/s SHREE DHYEY MINERAL Rajkot Highway, Near CNG pump, by pass circle, Village:kherali, Taluka : Wadhwan, District : Surendranagar, Gujarat-363001	Packaged Drinking Water (other than Packaged Natural Mineral Water) - Specification	14543	0	0	2004
08.	2842260	13/01/2014	M/s Shubhlaxmi Jewellers Shop no-1, ground floor, parimal chowk, D & 1 Exceiu, Waghawadi Road, Takhteshwar, District : Bhavnagar, Gujarat	Gold and Gold Alloys, Jewellery/Artefacts - Fineness and Marking - Specification	1417	0	0	1999
09.	2842664	15/01/2014	M/s HARIOM AGRO INDUSTRIES Atika, Neharunagar Main Raod, Dhebar Raod, (South), Distt : Rajkot, Gujarat-360002	Specification for Pumps -Verical Turbine Mixed and Axial Flow, for Clear Cold Water	1710	0	0	1989
10.	2844870	21/01/2014	M/s OMKAR JEWELLERS Shashtri Road, City Survey No.65, Shop No. 3, Anjar, Distt : Kachchh, Gujarat-370110	Gold and Gold Alloys, Jewellery/Artefacts- Fineness and Marking - Specification	1417	0	0	1999

1	2	3	4	5	6	7	8	9
11.	2845468	23/01/2014	M/s HADID ISPAT Survey No. 148/1/1, Sihor- Ghanghali Road, Village Ghanghali, Taluka Sihor, District : Bhavnagar, Gujarat-364240	Carbon steel cast billet ingots,billets,blooms and slabs for re-rolling into steel for general structural purposes	2830	0	0	2012
12.	2845771	23/01/2014	M/s WELLJAL PUMP LIMITED Shed No. 1, Vavdi Survey No. 39, Khodal Estate, Behind Prashant Foundry, Gondal Road Highway, Vavdi, District : Rajkot, Gujarat-360005	Submersible Pumpsets -Specification	8034	0	0	2002
13.	2847169	27/01/2014	M/s HARI OM JEWELLERS Shop No-101, Near Jenily Shopping Center, Amba Aracade, M.G..Road, District : Junagadh, Gujarat-362001	Gold and Gold Alloys, Jewellery/Artefacts - Fineness and Marking - Specification	1417	0	0	1999
14.	2847270	27/01/2014	M/s RANGNATH JEWELLERS Chhathibari Ring Road, Nagarchakla, Bhuj, Distt : Kachchh, Gujarat-370001	Gold and Gold Alloys, Jewellery/Artefacts - Fineness and Marking - Specification	1417	0	0	1999
15.	2847977	30/01/2014	M/s HARIHAR PUMPS Near Dhokiya Motors, Near Railway Crossing, National Highway 8-B, Gondal Highway, Kothariya Solvent, Kothariya, District : Rajkot, Gujarat-360004	Submersible Pumpsets -Specification	8034	0	0	2002
16.	2848777	31/01/2014	**M/s TOPLAND PUMPS PVT. LTD.** Opp Parsana Foundary, Umakant Pandit Udyognagar, Mavdi Plot Rajkot, Rajkot Gujarat-360004	Openwell Submersible Pumpsets - Specification	14220	0	0	1994

[No.CMD/13:11]

M. RADHAKRISHNA, Scientist 'F' & Head

नई दिल्ली, 8 फरवरी, 2014

का.आ. 1205.—भारतीय मानक ब्यूरो (प्रमाणन विनियन, 1988 के विनियम 4 के उपविनियम 5 के अनुसरण में भारतीय मानक ब्यूरो एतद्द्वारा अधिसूचित करता है कि जिनके विवरण नीचे अनुसूची में दिए गए हैं को लाइसेंस रद्द किए गए हैं :

अनुसूची

क्र. सं.	लाइसेंस संख्या	लाइसेंसधारी का नाम एवं पता	लाइसेंस के अंतर्गत वस्तु/प्रक्रम सम्बद्ध भारतीय मानक का शीर्षक	समाप्ति की तिथि
1.	7731478	मैसर्स संदिप सीमेन्टस प्राईवेट लिमिटेड प्लॉट नं 1, 2 एवं 5 जी आई डी सी, महुवा, जिला भावनगर, गुजरात-364290	53 ग्रेड साधारण पोर्टलैंड सीमेंट -विशिष्टि	24 जनवरी 2014

[सं. केन्द्रीय प्रमाणन विभाग /13:11]

एम. राधाकृष्णा, वैज्ञानिक 'एफ' एवं प्रमुख

New Delhi, the 8th February, 2014

S.O. 1205.—In pursuance of sub-regulation(6) of regulation 5 of the Bureau of Indian Standards (Certificate) Regulations, 1988, of the Bureau of Indian Standards, hereby notifies the grant of licences particulars of which are given below have cancelled/suspended with effect from the date indicated against each:

SCHEDULE

SI. No.	Licences No. CM/L-	Name & Address of the Licensee	Article/Process with relevant Indian Standards coverd by the licence cancelled/suspension	Date of Cancellation
1.	7731478	M/s SANDIP CEMENTS PVT LTD PLOT NO 1, 2 & 5, GIDC, MAHUVA, DISTRICT, : BHAVNAGAR GUJARAT - 364290	Specification for 53 grade ordinary Portland cement	24/01/2014

[No. CMD/13:11]

M. RADHA KRISHNA, Scientist 'F' & Head

नई दिल्ली, 4 मार्च, 2014

का.आ. 1206.—भातीय मानक ब्यूरो (प्रमाणन) विनियम, 1988 के विनियम 4 के उपविनियम 5 अनुसरण में भारतीय मानक ब्यूरो एतद्द्वारा अधिसूचित करता है कि जिनके विवरण नीचे अनुसूची में दिए गए हैं को लाइसेंस प्रदान किए गए है :-

अनुसूची

क्रम सं.	लाइसेंस सं.	स्वीकृत करने की तिथि वर्ष माह	लाइसेंसधारी का नाम एवं पता	भारतीय मानक का शीर्षक	भा मा संख्या	भाग	अनु	वर्ष
1	2	3	4	5	6	7	8	9
01.	2849981	03/02/2014	मैसर्स सिल्वर इन्जीन्यरींग कं. राजकोट गोंडल राजमार्ग, किशान पेट्रोल पम्प के पास, मेगोटीक्ष इन्डस्ट्रीज प्रा. लि. के पीछे कांगशीयाली, राजकोट, गुजरात 360002	कृषि और जलपूर्ति के लिये साफ और ठंडे पानी के बिजली के मोनोसट पम्प - विशिष्टि	9079	0	0	2002

1	2	3	4	5	6	7	8	9
02.	2850259	03/02/2014	मैसर्स जय विजय फूड एन्ड बेवरेजीस प्लॉट नं. 62, 63, 70, & 71, मार्केटींग यार्ड के सामने, सुरभी मसाला के पास, दोलतपुरा, जुनागढ, गुजरात-362001	पैकेजब्द पेय जल (पैकेजबन्द प्राकृतिक मिनरल जल के अलावा	14543	0	0	2004
03.	2851160	04/02/2014	मैसर्स जैन ईरिगेशन सिस्टमस लि. सर्वे नं.-215, गॉव & पोस्ट घांघली, तालुका सिहोर, जिला भावनगर, गुजरात-364240	जल आपूर्ति हेतु उच्च घनत्व पॉलीइथाइलीन पाइप	4984	0	0	1995
04.	2853164	04/02/2014	मैसर्स लक्की गोल्ड स्मिथ शोप नं.-1, राजेन्द्रा चोक, आडीपुर, जिला कच्छ, गुजरात	स्वर्ण एवं स्वर्ण मिश्रधातुएं, आभूषण/ शिल्पकारी शुद्धता एवं मुहरांकन - विशिष्टि	1417	0	0	1999
05.	2852970	12/02/2014	मैसर्स वेलस्पुन कोर्पोरेशन लि. वर्षामेडी, अंजार भचाऊ रोड, तालुका अंजार, जिला कच्छ, अंजार, गुजरात 371110	संरचना उपयोग के लिए इस्पात के खोखले सेक्शन	4923	0	0	1997
06.	2853063	12/2/2014	मैसर्स मधुरम आर्ट ज्वेलर्स पेलेस रोड, 9 - पन्ना मानेक चेम्बर, जिला राजकोट, गुजरात-360001	स्वर्ण एवं स्वर्ण मिश्रधातुएं, आभूषण/शिल्पकारी शुद्धता एवं मुहरांकन - विशिष्टि	1417	0	0	1999
07.	2853669	13/02/2014	मैसर्स सेन्चुरी प्लायबोर्ड इन्डिया लिमिटेड सर्वे नं. 145/147, गांव मोटी चिराय, तालुका भचाऊ, जिला कच्छ, गुजरात-370140	समुद्री उपयोग के लिए प्लाईवुड	710	0	0	2010
08.	2853770	13/02/2014	मैसर्स सेन्चुरी प्लायबोर्ड इन्डिया लिमिटेड सर्वे नं. 145/147, गांव मोटी चिराय, तालुका भचाऊ, जिला कच्छ, गुजरात-370140	सामान्य प्रयोजनों के लिए प्लाईवुड	303	0	0	1989
09.	2853871	13/02/2014	मैसर्स सेन्चुरी प्लायबोर्ड इन्डिया लिमिटेड सर्वे नं. 145/147, गांव मोटी चिराय, तालुका भचाऊ, जिला कच्छ, गुजरात-370140	ब्लॉक बोर्ड	1659	0	0	2004

1	2	3	4	5	6	7	8	9
10.	2853972	13/02/2014	मैसर्स सेन्चुरी प्लायबोर्ड इन्डिया लिमिटेड सर्वे नं. 145/147, गांव मोटी चिराय, तालुका भचाउ, जिला कच्छ, गुजरात-370140	लकड़ी के सपाट दरवाजे के शटर ठोस) कोर टाइप (भाग 1 प्लाईवुड के सतह युक्त पल्ले	2202	1	0	1999
11.	2854267	13/02/2014	मैसर्स टीएसके प्लाय और वीनीर इन्डस्ट्रीज सर्वे नं. 1184, तालुका भचाउ, जिला कच्छ, गुजरात-370140	समुद्री उपयोग के लिए प्लाईवुड	710	0	0	2010
12.	2854267	13/02/2014	मैसर्स टीएसके प्लाय और वीनीर इन्डस्ट्रीज सर्वे नं. 1184, तालुका भचाउ, जिला कच्छ, गुजरात-370140	लकड़ी के सपाट दरवाजे के शटर ठोस)कोर टाइप(भाग 1 प्लाईवुड के सतह युक्त पल्ले	2202	1	0	1999
13.	2854469	13/02/2014	मैसर्स टीसएके प्लाय और वीनीर इन्डस्ट्रीज सर्वे नं. 1184, तालुका भचाउ, जिला कच्छ, गुजरात-370140	सामान्य प्रयोजनों के लिए प्लाईवुड	303	0	0	1989
14.	2854570	13/02/2014	मैसर्स नवकार प्लायवुड 13 कोमल कोम्पलेक्स, प्लॉट नं. 305, वोर्ड नं. 12/बी, गांधीधाम, जिला कच्छ, गुजरात-370201	सामान्य प्रयोजनों के लिए प्लाईवुड	303	0	0	1989
15.	2854671	13/02/2014	मैसर्स नवकार प्लायवुड 13 कोमल कोम्पलेक्स, प्लॉट न. 305, वोर्ड नं. 12/बी, गांधीधाम, जिला कच्छ, गुजरात-370201	समुद्री उपयोग के लिए प्लाईवुड	710	0	0	2010
16.	2854974	14/02/2014	मैसर्स लीवा पम्पस प्राईवेट लिमिटेड, आजी वसाहत प्लॉट नं. 61/अ, राम नगर गली नं. 3, रशीकलाल एवं कु. के पीछे, 80 फीट रोड, राजकोट, गुजरात-360003	निमज्जनीय पम्प सेट	8034	0	0	2002
17.	2855471	17/02/2014	मैसर्स मधुरम इन्जीनीयर्स लोधीका इन्डस्ट्रीयल एस्टेट, प्लोट नं. जी - 911 बी, मेटोडा, जिला राजकोट, गुजरात-360005	निमज्जनीय पम्प सेट	8034	0	0	2002

1	2	3	4	5	6	7	8	9
18.	2855572	17/02/2014	मैसर्स मधुरम इन्जीनीयर्स लोधीका इन्डस्ट्रीयल एस्टेट, प्लॉट नं. जी-911 बी, मेटोडा, जिला राजकोट, गुजरात-360005	खुले कुएं के लिए निमज्जय पम्प सेट	14220	0	0	1994
19.	2856271	18/02/2014	मैसर्स भारत पम्प इन्डस्ट्रीज जिवराज इन्डस्ट्रीयल एरीया, प्लॉट नं. 16, सर्वे नं. 47, फाल्कन पम्प के पास, गोंडल रोड, वावडी, जिला राजकाट, गुजरात-360004	निमज्ज्नीय पम्प सेट	8034	0	0	2002
20.	2856776	18/02/2014	मैसर्स धी स्टान्डर्ड एग्रो एन्जीनियर्स जयनाथ पेट्रोल पम्प के सामने, भावनगर रोड़ जिला राजकोट, गुजरात-360003	निमज्जनीय पम्प सेट	8034	0	0	2002
21.	2857071	18/02/2014	मैसर्स सत्यम स्टील इन्डस्ट्रीज सर्वे नं. 240/बी, भावनगर राजकोट हाईवे, नवागाम, जिला भावनगर, गुजरात-364250	कंक्रीट प्रबलन के लिए उच्च सामर्थ्य विकसित इस्पात छड और पार	1786	0	0	2008
22.	2858477	25/02/2014	मैसर्स श्री मंजुल ज्वेलर्स 22- डिगविजय प्लॉट, मैन रोड, न्यू स्कूल रोड, जिला खेडा, गुजरात-361005	स्वर्ण एवं स्वर्ण मिश्रधातुएं, आभूषण/ शिल्पकारी शुद्धता एवं मुहरांकन - विशिष्ट	1417	0	0	1999
23.	2859176	25/02/2014	मैसर्स टोपलेन्ड पम्पस प्राईवेट लिमिटेउ परसाना फाउन्ड्री के सामने, उमाकान्त पंडित उद्योग नगर, मवडी प्लोट, राजकाट, गुजरात-360004	निमज्जन पम्पसेटों के लिए मोटरें विशिष्ट	9283	0	0	1995
24.	2859782	28/02/2014	मैसर्स खेडुंत इरीगेशन इन्डीया प्राईवेट लिमिटेड प्लॉट नं. 13, 14, 15, 16, & 19 आर एस नं. 53 हडमताला, शीवकृपा केमीकल के पास, राजकोट गोंडल हाईवे रोड एन एच 8 बी, भुनावा तालुका गोंडल, हडमताला, जिला राजकोट, गुजरात-360311	जल आपूर्ति हेतु उच्च घनत्व पॉलीइथाइलीन पाइप	4984	0	0	1995
25.	2859883	28/02/2014	मैसर्स खेडुंत इरीगेशन इन्डीया प्राईवेट लिमिटेड प्लॉट नं. 13, 14, 15, 16 & 19 आर एस नं. 53 हडमताला, शीवकृपा केमीकल के पास, राजकोट गोंडल हाईवे रोड एन एच 8 बी, भुनावा तालुका गोंडल, हडमताला, जिला राजकोट, गुजरात-360311	सिंचाई उपस्कार सिंप्रकलर पाइप- विशिष्ट	14151	1	0	1999

[सं. केन्द्रीय प्रमाणन विभाग/13:11]

एम. राधाकृष्णा, वैज्ञानिक 'एफ' एवं प्रमुख

New Delhi, the 4th March, 2014

S.O. 1206.—In pursuance of sub-regulation (5) of regulation 4 of the Bureau of Indian Standards (Certificate) Regulations, 1988, the Bureau of Indian Standards, hereby notifies grant of licences paticulars of which are givn below in the following schedule.

SCHEDULE

Sl. No.	Licence No.	Grant Date	Name and address of the party	Title of the Standard	IS No.	Part.	Sec.	Year
1	2	3	4	5	6	7	8	9
01.	2849981	03/02/2014	M/s. SILVER ENGINEERING COMPANY, Rajkot-Gondal Highway, Near Kishan Petrol Pump, B/H Magotteaux Industries Pvt. Ltd. Kangasiyali, District : Rajkot Gujarat-360002	Electric Monoset Pumps for Clear, Cold Water for Agricultural and Water Supply Purposes-	9079	0	0	2002
02.	2850259	03/02/2014	M/s. JAY VIJAY FOOD AND BEVERAGES Plot No. 62, 63, 70 & 71, Opp. Marketing yard, Near Surbhi Masala, Dolatpara, District : Junagagarh, Gujarat-362001	Packaged Drinking Water (other than Packaged Natural Mineral Water)- Specification	14543	0	0	2004
03.	2851160	04/02/2014	M/s. JAIN IRRIGATION SYSTEMS LTD Survey no. 215, At & PO- Ghangali, Taluka- Sihor, District : Bhavnagar, Gujrat-364240	Specification for high density polyethylene pipes for water supply	4984	0	0	1995
04.	2853164	07/02/2014	M/s. Lucky Gold Smith Shop No-1, Rajendra Chowk, Adipur, District : Kachchh, Gujarat	Gold and Gold Alloys, Jewellery/ Artefacts - Fineness and Marking - Specification	1417	0	0	1999
05.	2852970	12/02/2014	M/s. WELSPUN CORP LIMITED Varsamedi, Anjar-Bhachu Road, Taluka-Anjar, district-Kutch, Anjar, Gujarat-371110	Hollow steel sections for structural use	4923	0	0	1997
06.	2853063	12/02/2014	M/s. MADHURAM ART JEWELLERS Palace Road, 9- Panna Manek Chembar, District : Rajkot, Gujarat-360001	Gold and Gold Alloys, Jewellery/ Artefacts- Fineness and Marketing- Specification	1417	0	0	1999
07.	2853669	13/02/2014	M/s. CENTURY PLY BOARDS (INDIA) LIMITED Survey No. 145/147, Village Moti Chirai, Bhachau, District : Kachchh, Gujarat-370140	Specification for Marine Plywood	710	0	0	2010

1	2	3	4	5	6	7	8	9
08.	2853770	13/02/2014	M/s. CENTURY PLY BOARDS (INDIA) LIMITED Survey No. 145/147, Village Moti Chirai, Bhachau, District : Kachchh, Gujarat-370140	Specification for Plywood for general purposes	303	0	0	1989
09.	2853871	13/02/2014	M/s. CENTURY PLY BOARDS (INDIA) LIMITED Survey No. 145/147, Village Moti Chirai, Bhachau, District : Kachchh, Gujarat-370140	Specification for block boards	1659	0	0	2004
10.	2853972	13/02/2014	M/s. CENTURY PLY BOARDS (INDIA) LIMITED Survey No. 145/147, Village Moti Chirai, Bhachau, District : Kachchh, Gujarat-370140	Specification for wooden flush door shutters (solid core type) : Part 1 Plywood face panels	2202	1	0	1999
11.	2854267	13/02/2014	M/s. TSK PLY & VENEER INDUSTRIES Survey No. 1184, Taluka Bhachau, District : Kachchh, Gujarat-370140	Specification for Marine Plywood	710	0	0	2010
12.	2854267	13/02/2014	M/s. TSK PLY & VENEER INDUSTRIES Survey No. 1184, Taluka Bhachau, District : Kachchh, Gujarat-370140	Specification for wooden flush door shutters (solid core type) : Part 1 Plywood face panels	2202	1	0	1999
13.	2854469	13/02/2014	M/s. TSK PLY & VENEER INDUSTRIES Survey No. 1184, Taluka Bhachau, District : Kachchh, Gujarat-370140	Specification for plywood for general purposes	303	0	0	1989
14.	2854570	13/02/2014	M/s. NAVKAR PLYBOARD 13 Komal comlex, Plot No. 305, Ward 12/B, Gandhidham, Distt : Kachchh, Gujarat-370201	Specification for Plywood for general purposes	303	0	0	1989
15.	2854671	13/02/2014	M/s. NAVKAR PLYBOARD 13 Komal comlex, Plot No. 305, Ward 12/B, Gandhidham, Distt : Kachchh, Gujarat-370201	Specification for Marine Plywood	710	0	0	2010
16.	2854974	14/02/2014	M/s. LIVA PUMPS PRIVATE LIMITED Ajivasahat, Plot No. 61/A, Ram Nagar, Street, No.3, B/H Rasiklal & Co., 80 Feet Road, Rajkot, Gujarat-360003	Submersible Pumpsets - Specification	8034	0	0	2002

1	2	3	4	5	6	7	8	9
17.	2855471	17/02/2014	M/s. MADHURAM ENGINEERS Lodhika Ind. Estate, Plot No. G-911 B, Metoda, District : Rajkot Gujarat-360005	Submersible Pumpsets - Specification	8034	0	0	2002
18.	2855572	17/02/2014	M/s. MADHURAM ENGINEERS Lodhika Ind. Estate, Plot No. G-911 B, Metoda, District : Rajkot Gujarat-360005	Openwell Submersible Pumpsets - Specification	14220	0	0	1994
19.	2856271	18/02/2014	M/s. BHARAT ELECTRIC CO. Jivraj Industrial Area, Plot No. 16, Survey No. 47, N/R Falcon Pump, Gondal Road, Vavdi, District : Rajkot, Gujarat-360004	Submersible Pumpsets- Specification	8034	0	0	2002
20.	2856776	18/02/2014	M/s. THE STANDARD AGRO ENGINEERS Opposite Jainath Petrol Pump, Bhavnagar Road, District : Rajkot, Gujarat-360003	Submersible Pumpsets - Specification	8034	0	0	2002
21.	2857071	19/02/2014	M/s. SATYAM STEEL INDUSTRIES Survey No. 240/B, Bhavnagar Rajkot Highway, Navagam, District : Bhavnagar, Gujrat-364250	Specification for high strength deformed steel bars and wires for concrete reinforcement	1786	0	0	2008
22.	2858477	25/02/2014	M/s. SHREE MANJUL JEWELLERS 22-Digvijay Plot, Main Road, New School Road, District : Kheda, Gujarat-361005	Gold and Gold Alloys, Jewellery/ Artefacts- Fineness and Marking— Specification	1417	0	0	1999
23.	2859176	25/02/2014	M/s. TOPLAND PUMPS PVT. LTD Opp Parsana Foundry, Umakant Pandit Udhyognagar, Mavdi, Plot Rajkot, Rajkot, Gujarat-360004	Motors for Submersible Pumpsets - Specification	9283	0	0	1995
24.	2859782	28/02/2014	M/s. Khedut Irrigation (India) Private Limited Plot No. 13,14,15,16, & 19, R.S No. 53 of Handamtala, Nr. Shivakrupa Chemical, Rojkot - Gondal Highway, (N.H.8B) Bhunava, Taluka : Gondal, Hadamtala, District : Rajkot, Gujarat-360311	Specification for high density polyethylene pipes for water supply	4984	0	0	1995

1	2	3	4	5	6	7	8	9
25.	2859883	28/02/2014	M/s. Khedut Irrigation (India) Private Limited Plot No. 13,14,15,16, & 19, R.S No. 53 of Handamtala, Nr. Shivakrupe Chemical, Rojkot - Gondal Highway, (N.H.8B) Bhunava, Taluka : Gondal, Hadamtala, District : Rajkot, Gujarat-360311	Irrigation Equipment - Sprinkler Pipes - Specification - Part 1 : Polythylene Pipes	14151	1	0	1999

[No. CMD/13:11]

M. RADHAKRISHANA, Scientist 'F' and Head

नई दिल्ली, 7 अप्रैल, 2014

का.आ. 1207.—भारतीय मानक ब्यूरो (प्रमाणन) विनियम, 1988 के विनियम 4 के उप-विनियम 5 के अनुसरण में भारतीय मानक ब्यूरो एतद्द्वारा अधिसूचित करता है कि जिनके विवरण नीचे अनुसूची में दिए गए हैं को लाइसेंस रद्द किए गए हैं :

अनुसूची

क्र. सं.	लाइसेंस संख्या	लाइसेंसधारी का नाम एवं पता	लाइसेंस के अंतर्गत वस्तु/प्रक्रम सम्बद्ध भारतीय मानक का शीर्षक	रद्दीकरण तिथि
1	7760283	मैसर्स अरोमा हाइटेक लिमिटेड सर्वे नं 580, एन एच 15, शामखीयाली राधानपुर हाइवे, तालुका भाचाउ, लाकडीया जिला कच्छ, गुजरात	पेयजल आपूर्ति के लिए अप्लास्टिकृत पीवीसी पाइप	05 मार्च 2013

[सं. केन्द्रीय प्रमाणन विभाग/13:11]

एम. राधाकृष्णा, वैज्ञानिक 'एफ' एवं प्रमुख

New Delhi, the 7th April, 2014

S.O. 1207.—In pursuance of sub-regulation (6) of regulation 5 of the Bureau of Indian Standards (Certificate) Regulation, 1988, of the Bureau of Indian Standards, hereby notifies the grant of licences particulars of which are given below have cancelled/suspended with effect from the date indicated against each:

SCHEDULE

Sl. No.	Licences No. CM/L-	Name & Address of the Licensee	Article/Process with relevant Indian Standards covered by the licence cancelled/suspension	Date of Cancellation
1	7760283	M/s. AROMA HIGHTECH LTD. Survey no. 580, N.H. 15, Samkhiyali-Radhanpur Highway, Tal : Bhachau DISTRICT : Kachchh GUJARAT	Unplasticized PVC Pipes for Potable Water Supplies - Specification	05/03/2014

[No. CMD/13:11]

M. RADHA KRISHNA, Scientist 'F' and Head

नई दिल्ली, 7 अप्रैल, 2014

का.आ. 1208.—भारतीय मानक ब्यूरो नियम, 1987 के नियम 7 के उप-नियम (1) के खंड (ख) के अनुसरण में भारतीय मानक ब्यूरो एतद्द्वारा अधिसूचित किया जाता है कि जिस भारतीय मानक का विवरण नीचे अनुसूची में दिया गया है वे रद्द कर दिए गए हैं और वापसी ले लिए गए हैं :-

अनुसूची

क्रम सं.	रद्द किये गये मानकों की संख्या और वर्ष	भारत के राजपत्र भाग II, खंड 3, उप-खंड (ii) में का.आ. संख्या और तिथि प्रकाशित	टिप्पणी
(1)	(2)	(3)	(4)
1	आई एस 6600: 1975	0115, 11 जनवरी 1975	-

[संदर्भ ईटी 16/टी-3]

आर. सी. मैथयू, वैज्ञानिक 'एफ' एवं प्रमुख (विद्युत तकनीकी)

New Delhi, the 7th April, 2014

S.O. 1208.—In pursuance of clause (b) of sub-rule (1) of Rule 7 of the Bureau of Indian Standards Rules, 1987, it is hereby notified that the Indian Standard, particular of which is mentioned in the schedule give hereafter, have been cancelled and stands withdrawn.

SCHEDULE

Sl.No.	No. & Year of the Indian Standards Cancelled	S.O. No. & Date published in the Gazette of India. Part-II, Section-3, Sub-section (ii)	Remarks
(1)	(2)	(3)	(4)
1.	IS 6600: 1975	0115, 11 January 1975	-

[Ref. ET 16/T-3]

R.C. MATHEW, Scientist 'F' & Head (Electrotechnical)

नई दिल्ली, 7 अप्रैल, 2014

का.आ. 1209.—भारतीय मानक ब्यूरो (प्रमाणन) विनियम, 1988 के विनिमय 4 के उपविनियम 5 के अनुसरण में भारतीय मानक ब्यूरो एतदद्वारा अधिसूचित करता है कि जिनके विवरण नीचे अनुसूची मे दिए गए हैं को लाइसेंस प्रदान किए गए है :/-

अनुसूची

क्रम सं.	लाइसेंस सं.	स्वीकृत करने की तिथि वर्ष माह	लाइसेंस का नाम एवं पता	भारतीय मानक का शीर्षक	भा मा संख्या	भाग	अनु	वर्ष
1	2	3	4	5	6	7	8	9
01.	2860868	04 मार्च 2014	मैसर्स श्री हरी ज्वेलर्स 3, सानीध्य कोम्पलेक्स, डाउन चोक, जिला भावनगर, गुजरात-364001	स्वर्ण एवं स्वर्ण मिश्रधातुएं, आभूषण/ शिल्पकारी शुद्धता एवं मुहरांकन - विशिष्टि	1417	0	0	1999

1	2	3	4	5	6	7	8	9
02.	2860969	04 मार्च 2014	मैसर्स के बी इस्पात प्राइवेट लिमिटेड प्लॉट नं 93/अ, तिरुपती हाउस, गीता चोक के पास, किष्नानगर, भावनगर, गुजरात-364001	सामान्य संरचना इस्पात में पुनर्वे ल्लन के लिये कार्बन ढलवा इस्पात बिलेट इंगट बिलेट ब्लूम और स्लैब की विशिष्ट	2830	0	0	2012
03.	2862973	07 मार्च 2014	मैसर्स ग्रीनप्लाय इन्डस्ट्रीज लिमिटेड प्लॉट नं 910-913, जी आइ डी सी ऐस्टेट, बामनबेर, तालुका चोटिला, जिला सुरेन्द्रानगर, गुजरात-365520	रेजिन उपचारित संपीडित लकड़ी व लेमिनेट (कम्प्रेग) भाग 3 सामान्य प्रयोजन हेतु	3513	3	0	1989
04.	2863268	10 मार्च 2014	मैसर्स लाभ इन्जीनीयरिंग कु . प्लॉट नं 19-20, सेड नं 9, पीयुष इन्जीनीयरिंग के पीछे, भोला इस्टेट, धावनी इन्डस्ट्रीज ऐरीया, स्ट्रीट नं 6, कोठारिया सोल्वेट कासींग, कोठारिया जिला राजकोट, गुजरात-360003	निमज्जनीय पम्प सेट	8034	0	0	2002
05.	2863975	11 मार्च 2014	मैसर्स अजंता प्राइवेट लिमीटेड ओरपेट इन्डस्ट्रीयल इस्टेट, राजकोट हाईवे, मोरबी, जिला राजकोट, गुजरात-363641	छत् के बिजली के पंखे और रेगुलेटर	347	0	0	1979
06.	2864270	12 मार्च 2014	मैसर्स ए एम इस्पात लिमीटेड 202, पृथ्वी कोमप्लेक्स, शांतकुमार राम चोक, कालानाणा, जिला भावनगर, गुजरात-364002	सामान्य संरचना इस्पात में पुनर्वेल्लन के लिए कार्बन ढलवां इस्पात बिलेट इंगट बिलेट ब्लूम और स्लैब की-विशिष्ट	2830	0	0	2012
07.	2864371	12 मार्च 2014	मैसर्स सोनी रतीलाल मुलचन्डभाई एण्ड सन्स मैन बाजार, खरेडी, जिला जामनगर, गुजरात-360540	स्वर्ण एवं स्वर्ण मिश्रधातुएं, आभूषण/ शिल्पकारी शुद्धता एवं मुहरांकन - विशिष्टि	1417	0	0	1999
08.	2864472	12 मार्च 2014	मैसर्स शुभम स्टील इन्डस्ट्रीज 166, राफालेश्रवर जी आई डी सी, 8-अ, नेशलन हाईवे, तालुका मोरबी, जांबुडीया, जिला राजकोट, गुजरात-363642	घरेलु प्रयोजनों के लिए स्टेनलैस इस्पात के सिंक -विशिष्टि	13983	0	0	1994

1	2	3	4	5	6	7	8	9
09.	2865070	12 मार्च 2014	मैसर्स त्रिवेणी आयरन एण्ड स्टील इन्डस्ट्रीज प्राइवेट लिमिटेड एफ -28, रुवापरी रोड, भावनगर, गुजरात-360002	सामान्य संरचना कार्यों के लिए इस्पात	2062	0	0	2011
10.	2865878	19 मार्च 2014	मैसर्स शोहम ज्वेलर्स सतवारा वाडा के पास, जाम खंभाडीया, जिला जामनगर, गुजरात-361305	स्वर्ण एवं स्वर्ण मिश्रधातुएं, आभूषण/ शिल्पकारी शद्धता एवं मुहरांकन - विशिष्टि	1417	0	0	1999
11.	2866274	19 मार्च 2014	मैसर्स जी जे प्लाय इम्पेक्स प्राइवेट लिमिटेड सर्वे नं 36/1, अंजार रोड, गांव मेघपर बोरीची, तालुका अंजार, अंजार, जिला कच्छ, गुजरात-370110	लकड़ी के सपाट दरवाजे के शटर (ठोस कोर टाइप) भाग 1 प्लाईवुड के सतह युक्त पल्ले	2202	1	0	1999
12.	2866375	19 मार्च 2014	मैसर्स जी जे प्लाय इम्पेक्स प्राइवेट लिमिटेड सर्वे नं 36/1, अंजार रोड, गांव मेघपर बोरीची, तालुका अंजार, अंजार, जिला कच्छ, गुजरात-370110	सामान्य प्रयोजनों के लिए प्लाईवुड	303	0	0	1989
13.	2866476	19 मार्च 2014	मैसर्स जी जे प्लाय इम्पेक्स प्राइवेट लिमिटेड गांव मेघपर बोरीची, तालुका अंजार, अंजार, जिला कच्छ गुजरात-370110	समुद्री उपयोग के लिए प्लाईवुड	710	0	0	2010
14.	2866577	19 मार्च 2014	मैसर्स जी जे प्लाय इम्पेक्स प्राइवेट लिमिटेड सर्वे नं 36/1, अंजार रोड, गांव मेघपर बोरीची, तालुका अंजार, अंजार, जिला कच्छ, गुजरात-370110	ब्लॉक बोर्ड	1659	0	0	2004
15.	2866880	19 मार्च 2014	मैसर्स एम डी इन्डुस्को कास्ट प्राइवेट लिमिटेड, सर्वे नं. 144, पैकी 1 एण्ड 2, नेसडा, तालुका सिहोर जिला भावनगर, गुजरात	कंक्रीट प्रबलन के लिए उच्च सामर्थ्य विकसित इस्पात छड़ और तार	1786	0	0	2008
16.	2867175	20 मार्च 2014	मैसर्स रायमंड सीरामीक्स रेलवे स्टेशन के पीछे, गांव थानगठ, तालुका चोटीला, जिला सुरेन्द्रानगर, गुजरात-363530	बैठकर शौचादि के लिए पात्र	2556	3	0	2004

1	2	3	4	5	6	7	8	9
17.	2867276	20 मार्च 2014	मैसर्स श्री इलेक्ट्रोमेल्स लिमिटेड, सर्वे नं. 95/1, घांघली, तालुका सिहोर, जिला भाव नगर, गुजरात-364240	सामान्य संरचना इस्पात में पुनर्वेल्लन के लिए कार्बन ढलवाँ इस्पात बिलेट इंगट बिलेट ब्लूम और स्लैब की -विशिष्ट	2830	0	0	2012
18.	2867680	20 मार्च 2014	मैसर्स नवकार प्लायबोर्ड 13 कोमल कोम्प्लेक्स, प्लॉट नं. 305, बोर्ड 12/बी, गांधीधाम, जिला कच्छ, गुजरात-370201	लकड़ी के सपाट दरवाजे के शटर (ठोस कोर टाइप) भाग 1 प्लाईवुड के सतह युक्त पल्ले	2202	1	0	1999
19.	2867781	20 मार्च 2014	मैसर्स नवकार प्लायबोर्ड 13 कोमल कोम्प्लेक्स, प्लॉट नं. 305, बोर्ड 12/बी, गांधीधाम, जिला कच्छ, गुजरात-370201	ब्लॉक बोर्ड	1659	0	0	2004
20.	2867882	20 मार्च 2014	मैसर्स केपीटल इस्पात सर्वे नं. 196/197, गांव घांघली, तालुका सिहोर, जिला भावनगर गुजरात-364006	सामान्य संरचना इस्पात में पुनर्वेल्लन के लिए कार्बन ढलवाँ इस्पात बिलेट इंगट बिलेट ब्लूम और स्लैब की -विशिष्ट	2830	0	0	2012
21.	2870871	27 मार्च 2014	मैसर्स रिध्धी पोलीमर्स सर्वे नं. 210, प्लॉट नं. बी 1, राजु इन्जीनियरिंग रोड, वेरावल (शापर), जिला राजकोट, गुजरात-360035	जल आपूर्ति हेतु उच्च घनत्व पॉलीइथाइलीन पाइप	4984	0	0	1995

[सं० केन्द्रीय प्रमाणन विभाग/13:11]

एम. राधाकृष्णा, वैज्ञानिक 'एफ' एवं प्रमुख

New Delhi, the 7th April, 2014

S.O. 1209.—In pursuance of sub-regulation (5) of regulation 4 of the Bureau of Indian Standard (Certificate) Regulations, 1988, the Bureau of Indian Standards, hereby notifies the grant of licences paticulars of which are givn below in the following Schedule :

SCHEDULE

Sl. No.	Licence No.	Grant Date	Name and address of the party	Title of the Standard	IS No.	Part.	Sec.	Year
1	2	3	4	5	6	7	8	9
01.	2860868	04/03/2014	M/s. SHREE HARI JEWELLERS 3, Sanidhya Complex, Dawn Chowk, District : Bhavnagar, Gujarat-364001	Gold and Gold Alloys, Jewellery/ Artefacts-Fineness and Marking - Specification	1417	0	0	1999

1	2	3	4	5	6	7	8	9
02.	2860969	04/03/2014	M/s. KB ISPAT PRIVATE LIMITED Plot No. 93/A, "Tirupati, House", Near Geeta Chowk, Krishnanagar, Bhavnagar, District-Bhavnagar, Gujarat-364001	Carbon steel cast billet ingots,billets, blooms and slabs for re-rolling into steel for general structural purposes	2830	0	0	2012
03.	2862973	07/03/2014	M/s. GREENPLY INDUSTRIES LIMITED Plot No. 910-913, GIDC Estate, Bamanbor, Taluka Chotila, District : Surendranagar, Gujarat - 365520	Specification for Resin Treated Compressed Wood Laminates (Compregs) - Part 3: For General Purposes	3513	3	0	1989
04.	2863268	10/03/2014	M/s. LABH ENGINEERING CO. Plot No. 19-20, Shed No.9, Opposite Piyush Eng., Bhola Estate, Dhavni Ind Area, Street No. 6, Kothariya Solvent Crossing, Kothariya, District : Rajkot Gujarat-360003	Submersible Pumpsets - Specification	8034	0	0	2002
05.	2863975	11/03/2014	M/s. AJANTA PRIVATE LIMITED Orpat Industrial Estate, Rajkot Highway, Morbi, District : Rajkot, Gujarat-363641	Electric ceiling type fans and regulators	374	0	0	1979
06.	2864270	12/03/2014	M/s. AM ISPAT LTD 202, Pruthvi Complex, Santkumar Ram Chowk, Kalanala, District : Bhavnagar Gujarat-364002	Carbon steel cast billet ingots, billets, blooms and slabs for re-rolling into steel for general structural purposes	2830	0	0	2012
07.	2864371	12/03/2014	M/s. SONI RATILAL MULCHANDBHAI AND SONS Main Bazar, At:-Kharedi District : Jamnagar, Gujarat-360540	Gold and Gold Alloys, Jewellery/ Artefacts-Fineness and Marking - Specification	1417	0	0	1999
08.	2864472	12/03/2014	M/s. SUBHAM STEEL INDUSTRIES 166, Rafaleshwar G.I.D.C., 8-A National Highway, Taluka Morbi, Jambudiya, District : Rajkot Gujarat-363642	Specification for stainless steel sinks for domestic purposes	13983	0	0	1994

1	2	3	4	5	6	7	8	9
09.	2865070	12/03/2014	M/s. TRIVENI IRON & STEEL INDUSTRIES PVT. LTD. F-28, Ruvapari Road, Bhavnagar, District : Bhavnagar, Gujarat : 364005	Steel for General Structural Purposes- Specification	2062	0	0	2011
10.	2865878	19/03/2014	M/s. SOHAM JEWELERS Near Satwara Wada, Jam-Khambhaliya, District : Jamnagar, Gujarat-361305	Gold and Gold Alloys, Jewellery/ Artefacts-Fineness and Marking - Specification	1417	0	0	1999
11.	2866274	19/03/2014	M/s. JG PLY IMPEX PRIVATE LIMITED Survey No. 36/1, Anjar Road, Village Meghpar Borichi, Taluka Anjar, Anjar, District : Kachchh, Gujarat-370110	Specification for wooden flush door shutters (solid core type): Part 1 Plywood face panels	2202	1	0	1999
12.	2866375	19/03/2014	M/s. JG PLY IMPEX PRIVATE LIMITED Survey No. 63/1, Anjar Road, Village Meghpar Borichi, Taluka Anjar, District : Kachchh, Gujarat-370110	Specification for Plywood for general purposes	303	0	0	1989
13.	2866476	19/03/2014	M/s. JG PLY IMPEX PRIVATE LIMITED Survey No. 36/1, Anjar Road, Village Meghpar Borichi, Taluka Anjar, District : Kachchh, Gujarat-370110	Specification for Marine Plywood	710	0	0	2010
14.	2866577	19/03/2014	M/s. JG PLY IMPEX PRIVATE LIMITED Survey No. 63/1, Anjar Road, Village Meghpar Borichi, Taluka Anjar, District : Kachchh, Gujarat-370110	Specification for block boards	1659	0	0	2004
15.	2866880	19/03/2014	M/s. M D INDUCTO CAST PRIVATE LIMITED Survey No. 144, Paiki 1& 2 At Nesada, Taluka Sihor, District : Bhavnagar Gujarat	Specification for high strength deformed steel bars and wires for concrete reinforcement	1786	0	0	2008

1	2	3	4	5	6	7	8	9
16.	2867175	20/03/2014	M/s RAYMOND CERAMICS Opposite Railway Station, At Village Thangadh, Taluka Chotila, District : Surendranagar, Gujarat-363530	Vitreous Sanitary Appliances (Vitreous China) - Specification - Part 3 : Specific Requirements of Squatting Pans	2556	3	0	2004
17.	2867276	20/03/2014	M/s SHREE ELECTROMELTS LIMITED Survey No.95/1, At Ghanghali, Taluka Sihor, District : Bhavnagar, Gujarat-364240	Carbon steel cast billet ingots, billlets, blooms and slabs for re-rolling into steel for general structural purposes	2830	0	0	2012
18.	2867680	20/03/2014	M/s NAVKAR PLYBOARD 13 Komal Complex, Plot No. 305, Ward 12/B, Gandhidham, District : Kachchh, Gujarat-370201	Specification for wooden flush door shutters (solid core type): Part 1 Plywood face panels	2202	1	0	1999
19.	2867781	20/03/2014	M/s NAVKAR PLYBOARD 13 Komal Complex, Plot No. 305, Ward 12/B, Gandhidham, District : Kachchh, Gujarat-370201	Specification for block boards	1659	0	0	2004
20.	2867882	20/03/2014	M/s CAPITAL ISPAT Survey No. 196/197, Village Ghanghali, Taluka Sihor, District : Bhavanagar, Gujarat-364006	Carbon steel cast billet ingots, billets, blooms and slabs for re-rolling into steel for general structural purposes	2830	0	0	2012
21.	2870871	27/03/2014	M/s RIDDHI POLYMERS Survey No. 210, Plot No. B-1, Raju Eng Road, Veraval (Shapar), District : Rajkot, Gujarat-360035	Specification for high density polyethylene pipes for water supply	4984	0	0	1995

[No. CMD/13:11]

M. RADHAKRISHANA, Scientist 'F' and Head

श्रम एवं रोजगार मंत्रालय

नई दिल्ली, 24 मार्च, 2014

का.आ. 1210.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार टेलिकॉम डिस्ट्रिक्ट मेनेजर, बी एस एन एल, कुल्लू के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, चंडीगढ़ के पंचाट (संदर्भ संख्या 210/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-03-2014 को प्राप्त हुआ था ।

[सं. एल-40012/228/2003-आईआर (डीयू)]
पी. के. वेणुगोपाल, अनुभाग अधिकारी

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 24th March, 2014

S.O. 1210.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D. No. 210/2004) of the Central Government Industrial Tribunal/Labour Court, Chandigarh, now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Telecom District Manager, BSNL, Kulu and their workman, which was received by the Central Government on 24/03/2014.

[No. L-40012/228/2003-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

BEFORE SHRI SURENDRA PRAKASH SINGH, PRESIDING OFFICER, CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-I, CHANDIGARH

Case No. ID 210 of 2004

Reference No. L-40012/228/2003-IR (DU)

dated 07.06.2004

Sh. Sandeep Kumar, S/o Sh. Parmod Kumar,
VPO Sohari-III, Tehsil Barsar,
Distt. Hamirpur (Distt) ...Workman

Versus

1.The Telecom District Manager BSNL,
Kullu (HP)-175101 ...Respondent

Appearances :

For the Workman : Workman in Person.

For the Management : Sh. Sanjay Goyal (Advocate).

AWARD

(Passed on : 6.3.2014)

Government of India Ministry of Labour vide notification No. L-40012/228/2003-IR(DU) dated 07.06.2004 has referred the following dispute to this Tribunal for adjudication:

Term of Reference:

"Whether the action of the management of Telecom, now known as (BSNL) in terminating the services of Sh. Sandeep Kumar Ex-Temporary Labour, w.e.f. 31.12.1996 without complying with the provisions of the ID Act, 1947 is just and legal? If not, what relief the concerned workman is entitled to and from which date?"

2. The workman in his claim statement pleaded that he joined as daily wages with the management on 1.12.1995 and worked continuously up to 31.12.1996 without any break and his work and conduct was satisfactory and as per the Govt. policy he become entitled to regularization. His services were terminated on 31.12.1996 without assigning any reason and without complying the provisions of Section 25F, 25B, 25N and 25H of the I.D.Act 1947. He was not given any notice or pay in lieu of notice and retrenchment compensation at the time of his termination. The management also did not maintain the seniority and principle of "first come last go" was not followed. Juniors Jia Lal, Harish Chand, Ramesh Kumar, Tek Bahadur were retained and his (workman's)services were terminated. It is prayed by the workman that the management may be directed to reinstate him in the services with full back wages and other consequential benefits.

3. The management filed written statement in which it is pleaded by the management that the workman never worked with the management. Therefore question of one month notice or payment of wages in lieu of notice and payment of any retrenchment compensation does not arise. The management has not violated any provisions of the Industrial Disputes Act, 1947. There is no such record available with the office of the management in which the workman was shown to have worked with the office of Telecom District Kullu. It is pleaded by the management that there is no violation of any provisions of the I.D. Act, 1947 on behalf of the management, therefore, the workman is not entitled for reinstatement in service and any other benefit of service.

4. In evidence, workman filed his affidavit and also placed on record documents. The management in evidence examined Lalit Sharma working as STE, HR legal in the office of District Manager,Telecom Kullu. Both the witnesses were examined and cross examined by the rival parties. The workman in cross examination stated that experience certificate was issued by SDO, telecom, Kullu,

on 03.08.1996, in which the workman was shown to be working as temporary labour in the telecom department, Kullu, from December 1995, till date of issue of the experience certificate on the wages @ Rs. 45.75 paise per day. It is also admitted by the workman that he was not given any appointment at the time of recruitment. No application was invited, nor any interview was held. It is further admitted by him that he was informed by Madan Lal, who belongs to his village that department need labour. He also stated that he worked with the then SDO Jagdish Singh. He used to pay the wages and would take signature. It is admitted by him that he used to be paid @ Rs.45.75 paise per day. He also stated that he does not know whether anybody was recruited after his termination.

5. The management witness Sh. Lalit Sharma stated in cross examination that it is not known to him that workman worked under SDO Sh. Jagdish Singh Thakur. He further stated that certificate does not bear any number, by which office it has been issued. He also stated that his office is having the record for the period 01.12.1995 of 31.12.1996. It is further stated by him that Jagdish Singh, the than SDO has signed and issued the certificate. He has been retired and presently living at Sarka Ghat.

6. I have heard the arguments and also gone through the evidence and record of the case.

7. The case of the workman is that he worked with the management for considerable period for more than one year and completed 240 days of service and his services were terminated without following the procedure as prescribed under Section 25F, 25G and 25H of the Industrial Disputes Act, 1947, therefore, the management may be directed to reinstate him with full back wages. He rely on the certificate issued by Jagdish Singh the then SDO working with the Telecom Department Kullu who issued him the certificate of experience.

8. On the other hand the case of the management is that they have the record w.e.f. 1.12.1995 to 31.12.1996, but as the workman never worked with the management and there is no such record available about his service with the management. Therefore, the workman is not entitled to any relief and question of violating the mandatory provisions of Section 25F does not arise.

9. In so far as the engagement of the workman with the management is concerned, the workman in his statement admitted that no application was moved by him for any post. No interview was held for any post. He was working as labourer with the management. He was given the certificate of experience by Jagdish Singh SDO working at the relevant time. The witness of the management also admitted in cross-examination that the experience certificate was signed and issued by Shri Jagdish Singh who has been retired and presently living in Sarka Ghat. In view of the above, the engagement and working of the workman with the management cannot be denied by the management. The management also did not produce the concerned SDO Shri Jagdish Singh who issued the certificate of experience to the workman.

10. As the workman was not engaged by the management with due procedure, the workman cannot be ordered to be reinstated in service. There may be position quite different where a service of a regular/permanent workman is terminated illegally or mala fide or by way of victimization, unfair labour practice etc. However in this case of termination of daily wage worker, instead of reinstatement the workman should be given monetary compensation which will meet the ends of justice.

11. The workman in the case in hand worked with the department for about one year. Taking into consideration the fact and circumstances of this case, the workman is awarded Rs. 8000 (eight thousands only) as one time compensation in lieu of reinstatement. The management is directed to pay Rs. 8000 (eight thousands only) to the workman within one month from the date of publication of the award.

12.The reference is answered accordingly. Central Govt. be informed. Soft as well hard copy be sent to the Central govt. for publication.

Chandigarh.
6.3.2014

S. P. SINGH, Presiding Officer

नई दिल्ली, 24 मार्च, 2014

का.आ. 1211.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार जनरल मेनेजर टेलिकॉम, बठिंडा के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, चंडीगढ़ के पंचाट (संदर्भ संख्या 269/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-03-2014 को प्राप्त हुआ था ।

[सं. एल-40012/433/99-आईआर (डीयू)]
पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 24th March, 2014

S.O. 1211.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D No. 269/2005) of the Central Government Industrial Tribunal/Labour Court No.2, Chandigarh, now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the General Manager, Telecom Bathinda and their workman, which was received by the Central Government on 24/03/2014.

[No. L-40012/433/99-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Present: Sri Kewal Krishan, Presiding Officer

Case No. I.D. No. 269/2005

Registered on 12.8.2005

Sh. Naresh Kumar S/o Sh. Raj Kumar
C/o Sh. N.K. Jeet, President,
Telecom Labour Union,
Mohalla Hari Nagar,
Lal Singh Basti Road,
Bathinda ...Petitioner

Versus

The General Manager, Telecom,
Bathinda (Punjab) ...Respondents

APPEARANCES :

For the workman Sh. Charanjeet Adv.

For the Management Sh. Anish Babbar Adv.

AWARD

Passed on- 4.3.2014

Central Government vide Notification No. L-40012/433/99/IR(DU) Dated 16.2.2000, by exercising its powers under Section 10 Sub-section (1) Clause (d) and Sub-section (2-A) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'Act') has referred the following Industrial dispute for adjudication to this Tribunal:-

> "Whether the action of the management of General Manager, Telecom, Ferozepur in terminating the services of Sh. Naresh Kumar S/o Sh. Raj Kumar is legal and justified? If not, to what relief the workman is entitled and from which date?"

In response to the notice, workman submitted statement of claim pleading that he served the respondent management from 1.1.1996 to 5.3.1999 and used to draw Rs. 2138 as monthly wage. That his services were terminated against the principles of natural justice which is void. That the persons junior to him were retained in service and even persons were recruited without calling him. That he is liable to be reinstated in service with all the benefits.

Respondent management filed reply denying the relationship and pleaded that workman never worked with the respondent. That the management used to give temporary work to the contractor and the contractor may have employed the workman. That the workman is not an employee of the respondent management.

In support of its case, parties led their evidence.

Workman appeared in the witness box and filed his affidavit reiterating the case as set out in the claim petition. He also placed on record photocopy of the Jumper Slip Exhibit W2 to W7 and Duty Chart mark 'B' and C1 to C2. He also examined Harphool Singh who has deposed in his affidavit that the workman was employed as a casual worker with the respondent management.

The workman has also summoned record from the Department and Thakur Das appeared in the witness box and did not produce the record by stating that the summoned record was not traceable in the office.

On the other hand the management has examined Pritpal Singh who filed his affidavit reiterating the case of the respondent management.

I have heard Sh. Charanjeet, counsel for the workman and Sh. Anish Babbar, counsel for the management.

Learned counsel for the workman carried me through the duty chart record Mark A1 to A6 and submitted that the management has given an evasive reply regarding the salary of the workman and since it was the duty of the management to maintain proper record relating to its employees which it did not produce and even did not examine the alleged contractor and therefore, in the circumstances, it is to be presumed that the workman was an employee of the respondent management whose services have been illegally terminated.

I have considered the contention of the learned counsel.

It is the definite case of the workman that he served with the JTO Malout on a permanent post from 1.1.1996 to 5.3.1999. The respondent management is a statutory body having its rules and regulations for employing the person in its office. It is nowhere pleaded or proved that the workman was appointed against a permanent job by following any procedure and even no appointment letter has come on the file. The duty chart mark A1 to A6 which are not proved on the file do not establish that workman was actually an employee of the respondent management. If the record summoned by the workman is not produced as deposed by Thakur Das; or is not maintained as stated by Pritpal Singh, examined by the respondent do not ipso facto prove that the workman was ever employed by the respondent management.

According to him, he was getting the salary of Rs.2138/- per month, but no record has been summoned from the management to prove that any salary was actually paid to him by the Department. In the circumstances, it cannot be said that he was an employee of the respondent management.

The statement made by Harphool Singh, examined by the workman do not serve any purpose and seems to have appeared in the witness box just to help the workman.

In result it is held that workman has failed to prove that he was employed by the respondent management and his services were terminated and he is not entitled to any relief. Reference is accordingly answered against the

workman. Let hard and soft copy of the award be sent to the Central Government for further necessary action.

KEWAL KRISHAN, Presiding Officer

नई दिल्ली, 24 मार्च, 2014

का.आ. 1212.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार चीफ जनरल मेनेजर टेलिकॉम बी एस एन एल अम्बाला के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, चंडीगढ़ के पंचाट (संदर्भ संख्या 30/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-03-2014 को प्राप्त हुआ था ।

[सं. एल-40012/19/2004-आईआर (डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 24th March, 2014

S.O. 1212.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D. No. 30/2004) of the Central Government Industrial Tribunal/Labour Court No. 2, Chandigarh, now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Chief General Manager, Telecom BSNL Ambala and their workman, which was received by the Central Government on 24/03/2014.

[No. L-40012/19/2004-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Present : Sri Kewal Krishan, Presiding Officer

Case No. I.D. No. 30/2004

Registered on 30.11.2004

Sh. Bhola Singh, S/o Sh. Sudarshan Singh,
Arjan Nagar, Anil Soap Factory,
Near Puja Petrol Pump,
Jagadhari Road, Ambala ...Petitioner

Versus

The Chief General Manager, Telecom,
BSNL, Haryana Telecom Circle,
107, Mali, Ambala ...Respondents

APPEARANCES :

For the workman : Sh. Tarun Gupta Adv.

For the Management : Sh. Anish Babbar Adv.

AWARD

Passed on- 3.3.2014

Central Government vide Notification No. L-40012/19/2004 IR(DU)) Dated 9.7.2004, by exercising its powers under Section 10 Sub-section (1) Clause (d) and Sub-section (2-A) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'Act') has referred the following Industrial dispute for adjudication to this Tribunal:-

> "Whether the action of the management of Telecom now known as BSNL in terminating the services of Sh. Bhola Singh, Ex-Part time Safaiwala w.e.f. 1/3/99 without any notice and without complying with the provisions of the ID Act, 1947 is just and legal? If not to what relief the concerned workman is entitled to and from which date?"

In response to the notice, the workman filed statement of claim pleading that he was engaged as a daily wage part time safaiwala by the respondent management from 21.12.1989 at the rate of Rs. 25 per day. He worked there up to 28.2.1999. That the Head Office issued letter dated 10.2.1995, 22.7.1995 and 16.9.1999 for converting the part-time casual labourer to full time casual labourer. But the said letter was not implemented qua the workman and his name was struck off from the rolls w.e.f. 1.3.1999 which is illegal and void and he is entitled to reinstatement with full benefits.

Respondent management filed written statement controverting the averments and pleaded that there was no relationship of employer and employee between the parties. That there is no post of Safaiwala in the department and the workman who alleged himself to be a daily wager cannot be appointed. It is further pleaded that the workman was a petty contractor who used to work for an hour or two on a negotiated amount and after the work, he used to do his own work of selling vegetables. Since he was not employed by the respondent management, his services were not terminated.

Parties led their evidence.

In support of its case, workman appeared in the witness box and filed his affidavit reiterating the case as set out in the claim petition. He also examined Nanak Chand who filed his affidavit deposing therein that he worked as store-keeper at Ambala and at that time the workman was engaged as Safai Karamchari.

On the other hand, the management examined Sh. S. K. Bhardwaj who filed his affidavit reiterating the case of the management as set out in the written statement.

I have heard Sh. Tarun Gupta, counsel for the workman and Sh. Anish Babbar, counsel for the management.

Learned counsel for the workman carried me through the letter Exhibit W1 and submitted that the same was issued by the Assistant Engineer mentioning therein that workman was continuously working in the department since 21st December, 1989 and further carried me through the vouchers

relating to the year 1994 to submit that the workman was paid at the rate or Rs.25/- per day and also carried me through the muster-roll for the year 1992-93 and submitted that the name of the workman is specifically mentioned therein; and thus taking the documents into account along with the statement of workman and Nanak Chand, it stands proved that the workman was in the employment of the respondent management and his services has been illegally terminated and he is entitled to reinstatement in service with all the benefits.

I have considered the contentions of the learned counsel.

In the Certificate Exhibit P1, it is mentioned that workman has been in service since 21.12.1989 and it has been issued by the Assistant Engineer who has not been examined by the workman to establish that the recitals in the said certificates are correct. However the photocopy of the vouchers placed on the file for the year 1994 shows that he was paid wages as Safaiwala at the rate of Rs.25 per day and sometimes he used to receive Rs.100/- for the work of four days. The muster-rolls have been placed on the file by the workman but no record has been summoned from the Department concerned to prove its authenticity. However fact remains that the workman was employed to do safai as is clear from the vouchers and as well from the written statement wherein it is pleaded that the workman was engaged to do safai but as a contractor which fact is not proved. Thus, relying the vouchers, it is held that workman worked as a daily wager getting payment at the rate of Rs.25 per day.

From the letters dated 10.2.1995 and 16.9.1999 wherein a proposal has been made to grant temporary status to casual labourers but workman has not proved that he was actually covered under the said letters nor he sought any relief under the said letter at any point of time except now pleading that he was covered under the said letter. Since the workman himself claims to be a daily wager which otherwise is clear from the copies of the vouchers placed on the file, he cannot claim the protection of the provisions of the Act for regularization of his services and in this respect reliance may be placed on Secretary, State of Karnataka and Others Vs. Umadevi and Others and it was observed as follows:-

Unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. If it is a contractual appointment, the appointment comes to an end at the end of the contract, if it were an engagement or appointment on daily wages or casual basis, the same would come to an end when it is discontinued.

Thus, the workman worked only as a daily wager and is not entitled to any relief and the reference is accordingly answered against the workman. Let hard and soft copy of the award be sent to the Central Government for further necessary action.

KEWAL KRISHAN, Presiding Officer

नई दिल्ली, 24 मार्च, 2014

का.आ. 1213.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सुपरिन्टेन्डेन्ट पोस्ट ऑफिस डिपार्टमेंट ऑफ पोस्ट्स एण्ड अदर्स के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, जयपुर के पंचाट (संदर्भ संख्या 7/2010) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-03-2014 को प्राप्त हुआ था ।

[सं. एल-40012/86/2009-आईआर (डीयू)]
पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 24th March, 2014

S.O. 1213.— In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 07/2010) of the Central Government Industrial Tribunal/Labour Court, Jaipur, now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Superintendent Post Office, Department of Posts & Others and their workman, which was received by the Central Government on 24/03/2014.

[No. L-40012/86/2009-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JAIPUR

BHARAT PANDEY, Presiding Officer

I.D. 7/2010

Reference No.L-40012/86/2009-IR(DU) dated: 8.2.2010

Shri Prabhu Singh
S/o Shri Uday Singh Rawat
R/o Village Bar, Tehsil Bheem,
Rajsamand.

V/s

1. The Superintendent
   Post Office, D/o Posts,
   Bhilwara Mandal, Bhilwara.
2. The Post Master General
   D/o Posts, Head Post Office,
   Ajmer.
3. I.P.O.
   D/o Posts, Gulabpura,
   Bhilwara (Rajasthan).

AWARD

2.1.2014

1. In exercise of the powers conferred under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of

the Industrial Disputes Act, 1947, the Central Government vide order dated 8.2.2010 referred the following Industrial Dispute to this tribunal for adjudication. The referred dispute is as mentioned below:

> "Whether the action of the management of Superintendent (Post Offices), Indian Postal Department, Bhilwara Division, in terminating the services of their workman Shri Prabhu Singh w.e.f. 2.8.2007 is legal & justified? If not, what relief the workman is entitled to?"

2. After receipt of the reference by tribunal, registered notices were sent to workman & opposite parties. Representation on behalf of workman was made on 19.4.2010 by Shri V.K.Mathur, Advocate. On 19.4.2010 representative on behalf of claimant workman sought time for filing of claim which was granted by my learned predecessor & 25.5.10 was fixed for filing the claim. No claim was filed on 25.5.10 & further time was sought which was granted & 19.7.10 was fixed for filing the claim. On 19.7.10 further time was sought for filing the claim hence case was adjourned & last opportunity was given to workman for filing the statement of claim on 6.9.10 but on 6.9.10 workman & his representative remained absent & no claim was filed. From perusal of ordersheet dated 6.9.10, it appears that tribunal was informed that advocates are on indefinite strike hence, next date 9.11.10 was fixed for filing the claim by workman but on that date also none appeared for workman & on its own motion tribunal adjourned the proceeding & fixed 25.11.10 for filing the claim. On 25.11.10 also none appeared on behalf of both the parties & in above circumstances, the case was reserved for award by my learned predecessor & on 26.11.10 "No Claim Award" was passed which was notified by the Central Government on 10.12.10.

3. From perusal of file it further appears that on 4.2.11 application with affidavit by Shri Prabhu Singh, workman was filed through learned counsel for setting aside the "No Dispute Award"dated 26.11.2010. Notices were issued to opposite parties fixing 12.4.11 for filing objection. On 12.4.11 representatives on behalf of opposite parties were present & copy of the application dated 4.2.11 was received for filing objection & 5.7.11 was fixed for objection & disposal of workman's application. Objection against application of the workman for setting aside ex-parte award was submitted by opposite parties vide registered post which was received by tribunal on 2.8.11 & copy of the objection was furnished to learned counsel for the workman on 7.12.11 & 9.2.12 was fixed for arguments of both the parties.

4.On 9.2.12 both the parties were present but argument was not heard & time was sought hence, 23.4.12 was fixed for arguments. On 23.4.12 order of proceedings ex-parte was passed against opposite parties due to absence & case was fixed on 29.5.12 for ex-parte arguments on behalf of applicant workman. On 29.5.12 order of proceedings ex-parte was recalled on application of opposite parties. On 29.5.12 itself argument was heard for final disposal of workman's application & 2.7.12 was fixed for order.

5. On 2.7.12 time was sought by representative of the applicant workman for filing rulings & time for the same was granted by my learned predecessor fixing 4.9.12 for order. On 4.9.12 rulings were filed & argument was heard fixing 11.10.12 for order. On 11.10.12 applicant workman was absent & opposite party was present but no order was passed due to engagement of Presiding Officer in other matters connected with award & 21.11.12 was fixed for passing order. On 21.11.12 none was present for applicant but opposite party was in presence & case was fixed for 19.12.12 for order. On 19.12.12 none was present for applicant, opposite party was present but my learned predecessor was on leave hence, 28.1.13 was fixed for order. On 28.1.13 none was present for applicant workman & representative of the opposite party was present but no order was passed due to Presiding Officer being on leave & 27.2.13 was fixed for order. On 27.2.13 none was present for applicant & representative of opposite party was present. On 27.2.13 order was passed by my learned predecessor setting aside the " No Dispute Award" dated 26.11.10 & CGIT 7/10 was restored.

6. On 27.2.13 after restoration of CGIT case no.7/10, opportunity was provided to claimant workman to file the statement of claim by 15.4.13. On 15.4.13 applicant was absent. Sh. B.S. Kulshrestha, Advocate appeared on behalf of learned counsel for the applicant on 15.4.13 with oral request that father of the learned counsel for the applicant workman has been hospitalized hence, further opportunity for filing statement of claim be given. Oral request was accepted by my learned Predecessor & last opportunity was given for filing statement of claim till 24.6.13. On 15.4.13 representative of opposite party was present. On 24.6.13 no statement of claim was filed & further time was sought by representative of the workman with statement that due to death of the father of the learned counsel, he could not contact the workman hence, further one opportunity be provided for filing statement of claim. My learned predecessor granted further time till 29.7.13 for filing the statement of claim looking into the reason shown by the learned counsel for the applicant. On 29.7.13 tribunal did not have Presiding Officer due to retirement of my learned predecessor. On 29.7.13 again applicant remained absent & opposite party was present. Next date 30.9.13 was fixed for filing statement of claim in accordance with order passed earlier. On 30.9.13 also court was vacant due to none appointment of Presiding Officer & next date 16.12.13 was fixed. Statement of claim was not filed on 30.9.13 also.

7. On 16.12.13 none was present for applicant workman. Opposite party was present. Statement of claim was not filed on 16.12.13 also & next date 1.1.14 was fixed by tribunal on its own motion for filing statement of claim.

8. On 1.1.14 none was present on behalf of applicant. Sh. Ashwini Kumar Tomar, Postal Inspector, was present for opposite party. No statement of claim was filed on 1.1.14 by applicant & in above circumstances, case was reserved for award.

9. It is clear from the above fact that workman has not filed statement of claim till date. Circumstances mentioned above reveal by themselves that it cannot be safely said that applicant workman has not been provided opportunity to file statement of claim. Except the sickness & death of the father of the learned counsel no other circumstance is available on record to justify none production of statement of claim on record.

10. It is important to note that it has been submitted by learned counsel for the applicant that due to sickness, hospitalization & demise of his father he could not contact the workman for preparation of statement of claim which indicates a neglect on the part of the workman to contact the counsel for preparation of statement of claim. Consistent & continuous absence of workman on all the dates after restoration of file & even on prior dates further strengthens his neglecting attitude & lack of interest & active participation in taking the reference ahead towards adjudication. In absence of statement of claim & evidence in relation to claim it is not possible to adjudicate the reference & pass an award on merit.

11. From above mentioned facts & circumstances, it appears that workman is not willing to file the statement of claim & contest the case further for adjudication. Under the circumstances, "No Claim Award" is passed in the alleged reference & the reference under adjudication is answered accordingly.

12. Award as above.

BHARAT PANDAY, Presiding Officer

नई दिल्ली, 24 मार्च, 2014

का.आ. 1214.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार महानिदेशक अनुसंधान अभिकल्प और मानक संगठन एण्ड अदर्स के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, लखनऊ के पंचाट (संदर्भ संख्या 116/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-03-2014 को प्राप्त हुआ था ।

[सं. एल-42012/03/2014-आईआर (डीयू)]
पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 24th March, 2014

S.O. 1214.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D No. 116/2011) of the Central Government Industrial Tribunal/Labour Court, Lucknow, now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Maha Nideshak, Anusandhan Abhikalpaur Manak Sangathan & Others and their workman, which was received by the Central Government on 24/03/2014.

[No. L-42012/03/2014-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, LUCKNOW

PRESENT

Dr. MANJU NIGAM, Presiding Officer

I.D. No. 116/2011

BETWEEN

Shri Sanjay Kumar S/o Late Surajbali 68/269,
Shyam Babu ka Hata, Lalkuwan, Lucknow

AND

1. Maha Nideshak
   Anusandhan Abhikalp aur Manak Sangathan
   RDSO, Manak Nagar, Lucknow – 11
2. Apar Maha Nideshak
   Anusandhan Abhikalp aur Manak Sangathan
   RDSO, Manak Nagar, Lucknow – 11
3. Nideshak (Civil)
   RDSO, Manak Nagar, Lucknow – 11

AWARD

1. The present industrial dispute has been filed by the workman, Shri Sanjay Kumar S/o Late Surajbali, 68/269, Shyam Babu ka Hata, Lalkuwan, Lucknow under provisions contained in the Section 2A of the Industrial Disputes Act, 1947 (14 of 1947) against alleged termination of his services by the management of Anusandhan Abhikalp aur Manak Sangathan, RDSO, Manak Nagar, Lucknow for adjudication before this CGIT-cum-Labour Court, Lucknow.

2. The workman, Sanjay Kumar, filed the statement of claim alleging therein that the management of the opposite party terminated his services by impugned order dated 27.09.2006 without affording him an opportunity to defend himself, which is in violation of the principles of natural justice. He has also alleged that the management did not heed his representations to set aside the punishment imposed upon him. Accordingly, the workman has prayed that the impugned order dated 27.09.2006 be set aside and he be reinstated with consequential benefits including back wages.

3. The management of the Research Designs & Standards Organization (hereinafter referred to as RDSO) has denied the claim of the workman by filing its statement

of claim wherein it has submitted that the workman is habitual absentee, which resulted into issuance of major charge sheet against him. The Inquiry Officer sent four letters asking him to appear in the inquiry proceedings; but he failed to attend the same due to which the inquiry was conducted ex-parte against the workman. Having charges proved the Disciplinary passed order for removal from services vide order dated 27.09.2006, which is just and reasonable. It has also submitted that no representation of the workman as ever received by the management. Moreover it is also submitted that the opposite party is a research institute; hence, is not an 'industry' under Section 2 's' of the I.D. Act. Accordingly, it has been prayed that the claim of the workman be rejected without any relief to him.

4. The workman has filed its rejoined wherein apart from reiterating the averments already made by him has not introduced any new fact.

5. The parties have filed documentary evidence in support of their respective claim. The workman filed its evidence on affidavit 25.07.2013 and next date was fixed 12.09.2013 for cross-examination of the workman. The workman did not turned on the next date for cross-examination; rather he remained absent on successive dates also i.e. on 31.10.2013, 31.10.2013, 02.12.2013 and 21.01.2014. When the workman did not turn up for cross-examination the management was asked to enter the witness box but the authorized representative of the management stated that it does not require to file any evidence; and accordingly, the case was reserved for award after hearing the parties.

6. Heard the authorized representative of the parties and perused the record.

7. The workman has come up with the case that his services have been terminated by the management of RDSO after holding an ex-parte inquiry, without affording him an opportunity to defend himself; which has been denied by the management. Hence, in view of the denial of the management it was incumbent upon the workman to enter the witness box and substantiate his pleadings that alleged unjust was committed to him by the management of the RDSO in violation to the principles of natural justice. But the workman has utterly failed in discharging the burden that lied upon him as he did not turn up to get himself cross-examined by the management.

8. It is well settled that if a party challenges the legality of order, the burden lies upon him to prove illegality of the order and if no evidence is produced by the party, invoking jurisdiction of the court, must fail. In the present case burden was on the workman to set out the grounds to challenge the validity of the impugned order. It was the case of the workman that his services have been terminated without affording him any opportunity to defend himself. This claim has been denied by the management; therefore, it was for the workman to lead evidence to show that the alleged injustice was being done to the workman.

9. In M/s. Uptron Powertronics Employees' Union, Ghaziabad through its Secretary vs. Presiding Officer, Labour Court (II), Ghaziabad & others 2008 (118) FLR 1164, Hon'ble High Court relied upon the law settled by the Apex Court in Sanker Chakravarti vs. Britannia Biscuit Co. Ltd. 1979 (39) FLR 70 (SC), V.K. Raj Industries v. Labour Court and others 1979 (39) FLR 70 (SC), Airtech Private Limited v. State of U.P. and others 1984 (49) FLR 38 and (Alld.) Meritech India Ltd. v. State of U.P. and others 1996 (74) FLR 2004; wherein it was observed by the Apex Court:

> "that in absence of any evidence led by or on behalf of the workman the reference is bound to be answered by the Court against the workman. In such a situation it is not necessary for the employers to lead any evidence at all. The obligation to lead evidence to establish an allegation made by a party is on the party making the allegation. The test would be, who would fail if no evidence is led."

10. In the present case the workman has not turned up to substantiate its case by way of oral evidence. Mere pleadings are no substitute for proof. It was obligatory on the part of workman to come forward with the case that his services have been terminated in contravention to the principles of natural justice; but the workman failed to forward any substantive evidence in support of his claim, as he did not turn up for cross-examination before this Tribunal. There is no reliable material for recording findings that the alleged injustice was done to the workman or the action of the management of the RDSO in terminating the services of the workman vide impugned order dated 27.09.2006 was illegal and unjustified.

11. In view of the case law cited and the discussions made hereinabove, I come to the conclusion that the workman, Sanjay Kumar is not entitled to any of the relief claimed by him.

12. Award as above.

LUCKNOW.
17th February, 2013.

Dr. MANJU NIGAM, Presiding Officer

नई दिल्ली, 24 मार्च, 2014

का.आ. 1215.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार प्रिंसिपल जनरल मेनेजर टेलिकॉम एण्ड अदर्स के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या सीजीआईटी/एनजीपी 43/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-03-2014 को प्राप्त हुआ था ।

[सं. एल-40012/37/2013-आईआर (डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 24th March, 2014

S.O. 1215.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D No. CGIT/NGP/43/2013) of the Central Government Industrial Tribunal/Labour Court, Nagpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Principal General Manager, Telecom & Others and their workman, which was received by the Central Government on 24/03/2014.

[No. L-40012/37/2013-IR(DU)]

P.K.VENUGOPAL, Section Officer

ANNEXURE

BEFORE SHRI J.P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/43/2013 Date: 13.02.2014

Party No.1(a) : The Principal General Manager, Telecom, Nagpur Telecom District, Telecom Bhawan, Civil Lines, Nagpur-440001

(b) The Additional General Manager, (CAFA,Central & West), BSNL, CTO Compound, 5th Floor, Civil Lines, Nagpur-440001.

(c) The Chief Superintendent, Central Telegraph Office, BSNL, CTO Building, Civil Lines, Nagpur-440001

Versus

Party No. 2 : Shri Satish Shrawan Dangoriya C/o Shri Deepak Waman (Sweeper Mohalla), Behind Gurudwara, Lakadganj, Bhandara Road, Nagpur-440001

AWARD

(Dated: 13th February, 2014)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of Telecom, Nagpur Telecom District and their workman, Shri Satish Shrawan Dongoriya for adjudication, as per letter No.L-40012/37/2013-IR (DU) dated 18.07.2013, with the following schedule:-

"Whether the action of the management of Bharat Sanchar Nigam Ltd. Nagpur in refusal of the employment to Shri Satish Shrawan Dongoriya, Pt.Time Casual Labour from 17.05.2012 without assigning any reason or without any order is just, fair and legal ? To what relief the applicant is entitled to?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement, by registered post with acknowledge due.

After receipt of the notice, the workman appeared through his advocates on 18.09.2014 and took adjournment for filing of statement of claim. The party No.1 also appeared through their advocates on the same date. However, both the parties remained absent from 18.12.2013.

Inspite of adjourning the case thrice for filing of statement of claim by the workman, the workman neither appeared nor filed any statement of claim since 18.12.2013. So, on 13.02.2014, the reference was closed, holding that the workman was not interested to proceed with the reference and the reference was fixed for award.

3. It is well settled that whenever a party challenges the legality of an order, the burden lies upon him to prove the illegality of the order and it is imperative for him to file written statement before the Industrial Court setting out grounds on which the order is challenged and he must also produce evidence to prove his case. If the party fails to appear or file written statement or produce evidence, the dispute referred by the Government cannot be answered in favour of the said party and the party would not be entitled to any relief.

Judging the present case with the touch stone of the settled principles as mentioned above, it is found that the workman has neither appeared nor filed any statement of claim and as such, he is not entitled to any relief. Hence, it is ordered:-

ORDER

The reference is answered in the negative and against the workman. The workman is not entitled to any relief.

J. P. CHAND, Presiding Officer

नई दिल्ली, 24 मार्च, 2014

का.आ. 1216.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार टेलिकॉम डिस्ट्रिक्ट मेनेजर संचार निगम लिमिटेड, भंडारा के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या सीजीआईटी/नागपुर/59/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-03-2014 को प्राप्त हुआ था ।

[सं. एल-40012/146/2001-आईआर (डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 24th March, 2014

S.O. 1216.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D No. CGIT/NGP/59/2001) of the Central Government Industrial Tribunal/Labour Court, Nagpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Telecom District Manager, Sanchar Nigam Limited, Bhandara and their workman, which was received by the Central Government on 24/03/2014.

[No. L-40012/146/2001-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

BEFORE SHRI J.P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No.CGIT/NGP/59/2001 Date: 11.02.2014

Party No.1 : The Telecom District Manager,
Sanchar Nigam Limited,
Sanchar Bhavan,
Bhandara- 441904 (MS)

Versus

Party No.2 : Shri Mohanlal Tulsiram Tawade,
R/o At . Post- Khamari,
Tah. & Distt. Gondia,
Maharashtra-441601

AWARD

(Dated: 11th February 2014)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of The Telecom District Manager, Bhandara and their workman, Shri Mohanlal Tulsiram Tawade for adjudication, as per letter No. L-40012/146/2001-IR (DU) dated 30.08.2001, with the following schedule:-

> "Whether the action of the management of Telecom District Manager, Sanchar Nigam Limited, Bhandara (Mah) in terminating the services of Shri Mohanlal Tulsiram Tawade w.e.f. 30.08.2000 is legal, proper & justified? If not, to what relief the said workman is entitled?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the workman, Shri Mohanlal Tulsiram Tawade, ('the workman" in short), filed the statement of claim and the management of The Telecom Dist. Manager, Bhandara, ("Party No. 1" in short) filed its written statement.

The case of the workman as projected in the statement of claim is that he was a permanent workman of party No.1 and he was appointed on daily wages on the post of Labour and he was doing the departmental work of maintenance and repair of old cables under the S.D.E. Cable, Gondia and the party No.1 is an "industry" and he is a "workman" within the meaning as provided in the Act and the work performed by him was of permanent nature and he was doing the work under the immediate supervision of the cable jointers, who were permanent employees of party No.1 and over all supervision of the S.D.E., Gondia and he was maintaining daily work diary, which was regularly being signed by the cable jointers and his salary was being paid on ACG-17 form, after verification of the same by the cable jointer and SDE, Gondia.

The further case of the workman is that he was continuously performing his duties since 01.09.1996 and he had acquired the status of permanent workman on completion of 240 days of service and he had requested the party No.1 to regularize his services, as he was legally entitled for the same and he had also approached the higher authorities of party No.1 in this regard, but party No.1, terminated his services high handedly on 30.08.2000, without any notice, in utter disregard to the principles of natural justice and violation of the provisions of section 25-F of the Act and as such, termination of his services was illegal and he raised the industrial dispute before the ALC (Central) II, Nagpur and the party No.1 in its written comments filed before the ALC, falsely alleged that he was not appointed by it and he was appointed by the contractor, who was doing the contract work of laying new cables at Gondia and during the conciliation proceeding, the statement of Shri M.N. Meshram, Sub-Divisional Officer, Telecom, on behalf of the party No.1 was recorded by the ALC and in his statement, Shri Meshram admitted that he (workman) was engaged in his office and the work mentioned by him (workman) in the "daily work diary" was carried out by the department and payment of wages to the labour was being made on ACG-17 form, whenever the work was done by the labour, which clearly show that he was engaged by party No.1 on daily wages and not by the contractor and during the conciliation, the ALC directed the party No.1 to produce the ACG 17 forms, but party No.1 failed to produce the same so adverse inference has to be drawn against the party No.1 for non production of documents and as the conciliation proceedings failed, failure report was submitted to the Central Government by the ALC and the Government has referred the industrial dispute to this Tribunal for adjudication.

The further case of the workman is that the termination of his services was by way of victimization and the work, which he was doing is of permanent nature and on the application submitted by him on 25.11.2000 to the Chief General Manager, Shri S.M. Elankar and Shri D.G. Nikhade, both permanent cable jointers of party No.1 had

certified about his working in the office of S.D.E., Gondia and payment was being made to him on ACG-17 Form and he had worked for 1372 days, from September, 1996 to August, 2000 at the rate of Rs. 50 per day.

The workman has prayed to reinstate him in service with continuity and full back wages.

3. The party no.1 in its written statement, by denying the allegations made in the statement of claim has pleaded inter alia that the workman was never in its employment and as such, question of his termination does not arise and in view of its expansion in maintenance work i.e. underground cable laying and other maintenance work, as per its policy, it had called for tenders from private contractors and tender contracts were issued to respective private contractors and one such contract of underground cable laying was given to the contractor, "Atul Engineering" and the said contractor had engaged casual labours from time to time, as per his requirement and the workman was one such casual labour engaged by Atul Engineering for executing the contract work awarded to them and as a matter of fact, the workman and four other labours were engaged by Atul Engineering and after completion of work, it seems, Atul Engineering did not engage the workman and the other labours and there was no nexus of master and servant relationship between it and the workman and Atul Engineering admitted the said fact before the A.L.C. and he had been paid his wages as per law till the date of his disengagement. The further case of the party No.1 is that it did not maintain any record with respect to the employment of the workman, since he was never in its employment and it had a policy decision not to engage any casual labour and it had been duly registered with the Assistant Labour Commissioner as a principle employer and had obtained a license to that effect on 13.11.1990 and subsequently on 25.05.1999 and annual returns in form XXV, in respect to the contractors engaged by it is regularly submitted to the ALC (Central) II, Nagpur and the ALC during his visit on 17.03.1990 and on 15.04.1999, under the provisions of contract Labour (R & A) Act, found that no casual labour was engaged by it and the work diary produced by the workman was prepared by him and the same was neither certified nor signed by any competent authority and the signatures on the said work diary were not by competent authority vested with managerial and administrative power.

The further case of the party No.1 is that the workman was never appointed by it on daily wages on the post of labour and he is not a workman within the meaning of the Act and the workman is not entitled to any relief.

4. In the rejoinder, the workman has pleaded that the alleged certificate issued by Atul Engineering is a false document and Atul Engineering issued the false certificate in collusion with party No.1.

5. In support of his claim, the workman has examined himself as a witness, besides placing reliance of documentary evidence. The examination-in-chief of the workman is on affidavit. The workman in his evidence has reiterated the facts mentioned in the statement of claim. The workman has proved the daily work diary maintained by him as Ext. W-II.

In his cross-examination, the workman has stated that no appointment letter was issued by the management in his favour and he had not registered his name in the Employment Exchange and he had not received any letter from BSNL to appear in any interview and the daily work diary, Ext. W-II has been signed by cable jointer Shri G.B. Yadav. He has denied the suggestion that he was engaged by the contractor, Atul Engineering for laying cable. He has also admitted that he did not receive any termination order.

6. One Shri Mahadeo Urkuda Gadpaly, A.G.M. (Administration) has been examined as a witness on behalf of the party No.1. In his examination-in-chief, which is also on affidavit, the witness for party No.1 has reiterated the facts mentioned in the written statement.

In his cross-examination, this witness has stated that he has no personal knowledge about the place of engagement of the workman from September, 1996 to August,2000 and in the application dated 25.11.2000, the workman had claimed to have worked for 1372 days from September,1996 to August,2000 and the same was certified to be true by the S.D.E. Cables, Gondia.

7. At the time of argument, it was submitted by the learned advocate for the workman that the workman was appointed on daily wages on 01.09.1996 by party No.1 as a labourer for doing the departmental work of maintenance and repair of old cables under SDE, cables, Gondia and the workman worked under the immediate supervision of the cable jointers and over all supervision of the SDE, Gondia and he was maintaining the daily work dairy, which was counter signed by the cable jointers and wages was being paid to the workman under ACG-17 form and on 30.08.2000, the services of the workman was terminated, in violation of the provisions of section 25-F of the Act and as such, the order of termination is illegal and the workman was never engaged by any contractor and from the evidence on record, it is clear that to avoid its responsibility, party No.1 took a false plea of engagement of the workman by the contractor and party No.1 failed to produce the ACG-17 forms, inspite of the direction of the ALC during conciliation and the documents produced by the management have been manufactured with collusion with M/s. Atul Engineering and the workman had worked for 120 days, 351 days, 332 days, 332 days and 244 days in the years, 1996, 1997, 1998, 1999 and 2000 respectively and as the order of termination of the services of the workman is illegal, he is entitled for reinstatement in service with continuity and full back wages.

In support of the contentions, the learned advocate for the workman placed reliance on the decisions reported in 2011 III CLR-748 (HNL, Casual & contract vs. Union of India), 2011 (128) FLR-723 (MP) and 2014 (1) Mh. L. J.-151(Chief Administrator, Housing Board Haryana vs. Dewan Chand).

8. Per contra, it was argued by the learned advocate for the party no.1 that the workman was never appointed on daily wages basis on the post of labour by party no.1 and as the workman was never in the employment of party no.1, the question of his termination does not arise at all and party no.1 had issued contract to Atul Engineering for laying underground cable and the said contractor had engaged the present workman and four other workers for executing the contract work awarded to them and after completion of the work, the workman was not engaged by the said contractor any more and there was no master and servant relationship between party no.1 and the workman and from the evidence on record including the documents filed by the party no.1, it is clear that the workman was engaged by Atul Engineering and he was never appointed by party no.1 and as such, the workman is not entitled to any relief.

9. In view of the stands taken by the parties, the first point for consideration is as to whether the workman was engaged as a labour on daily wages by the party no.1 or he was a contract labour as claimed by party no.1.

Perused the record including the pleadings of the parties and evidence produced by them, both oral and documentary. Admittedly, all the documents filed by the party no.1 regarding giving of contracts to Atul Engineering relate to the year 1999. The workman has claimed that he was maintaining the daily work diary and the same was being counter singed by the cable jointers, who were the permanent employee of the party no.1. Party no.1 in the written statement in para 15 has stated that the work diary produced by the workman was prepared by him and the same was not certified or signed by any competent authority. The said pleading shows that party no.1 has not denied about the maintenance of the daily work diary by the workman and about counter signature of the same by the cable jointers. It is clear from the daily work diary (Ext. W-II), The statement of Shri M. N. Meshram, the S.D.O., Telecom before the A.L.C. (Ext. M-I), Exts M-III to XXVI, the A.C.G. forms under which wages was being paid to the workman) and other evidence on record including the admission of the witness of the party no.1 that the workman was engaged by the Telecom department prior to the giving of work to M/s. Atul Engineering as a labour on daily wages and he was not engaged by the contractor.

It is clear from the evidence on record including the daily work diary that the workman had completed 240 days of work in the preceding 12 calendar months of the date of his termination i.e. 30.08.2000 and the termination of the services of the workman was done, without compliance of mandatory provisions of Section 25-F of the Act. So, the termination of the services of the workman on 30.08.2000 is illegal.

10. The next question for consideration is as to what relief or reliefs the workman is entitled to. Admittedly the engagement of the workman was on daily wages basis. Such engagement was not done in accordance with the Recruitment Rules of party no.1. It is clear from the materials on record that the workman was engaged for the period from 01.09.1996 till 30.08.2000 on daily wages basis and such engagement was made about 13 years back.

At this juncture, I think it apropos to mention about the decision of the Hon'ble Apex Court in this regard, as reported in 2010 (8) SCALE-583 (Incharge Officer another Vs. Shankar Shetty), (2013) 5 SCC-136 (Asstt. Engineer, Rajasthan Development Corporation Vs. Gitam Singh) and 2014 (1) Mh. L. J.-151 (Supra), on which reliance has been placed by the learned advocate for the workman.

In the decision reported in 2010(8) SCALE-583 (Supra), the Hon'ble Apex Court have held that:-

> "It is true that the earlier view of this court articulated in many decisions reflected the legal position that if the termination of an employee was found to be illegal, the relief of reinstatement with full back wages would ordinarily follow. However, in recent past there has been a shift in the legal position and in a long line of cases, this court has consistently taken the view that relief by way reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination of an employee is in contravention of the prescribed procedure. Compensation instead of reinstatement has been held to meet the ends of justice."

The Hon'ble Apex Court have further held that:-

> "Industrial Disputes Act 1947/Section 25F/Daily wager / Termination of service in violation of Section 25(F)/ Award of monetary compensation in lieu of reinstatement /Respondent was initially engaged as daily wager by appellants in 1978/His engagement continued for about 7 years intermittently up to 06.09.85/ Respondent raised industrial dispute relating to his retrenchment alleging violation of procedure prescribed in Sec. 25(F) of the Act/Labour Court rejected respondents claim: holding that Section 25(F) of the Act was not attracted since the workman failed to prove that he had worked continuously for 240 days in the calendar year preceding his termination 06.09.85. On appeal, High Court directed reinstatement of Respondent into service holding that termination of respondent was illegal—Whether an order of reinstatement will automatically follow in a case where engagement of

a daily wager has been brought to an end in violation of Section 25(F) of the Act—Allowing the appeal-held :

A. The High Court erred in granting relief of reinstatement to the respondent. The respondent was engaged as daily wager in 1978 and his engagement continued for about 7 year intermittently up to September 6, 1985 i.e. about 25 years back. In a case such as the present one it appears to us that relief of reinstatement cannot be justified and instead monetary compensation would meet the ends of justice. In our considered opinion the compensation of rupees one lakh (Rs. 1,00,000) in lieu of reinstatement shall be appropriate, just and equitable."

11. The Hon'ble Apex Court in the decision reported in (2013) 5 SCC-136 (Supra) have been pleased to take into consideration a large number of decisions delivered by the Hon'ble Apex Court earlier, including the decisions reported in 2011 II CLR-461 (Devinder Singh Vs. Municipal Council, Sonaur, on which reliance has been placed by the workman), (2010) 3 SCC-192 (Harjinder Singh Vs. Punjab State Warehousing Corporation) and (2010) 9 SCC-126 (Incharge Officer Vs. Shankar Setty.)

The Hon'ble Apex Court have been pleased to hold that:-

"In our view, Harjinder Singh and Devinder Singh do not lay down the proposition that in all cases of wrongful termination, reinstatement must follow. This court found in those cases that judicial discretion exercised by the Labour Court was disturbed by the High Court on wrong assumption that the initial employment of the employee was illegal. As noted above, with regard to the wrongful termination of a dialy wager, who had worked for a short period, this court in long line of cases has held that the award of reinstatement cannot be said to be proper relief and rather award of compensation in such cases would be in consonance with the demand of justice. Before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors, including the mode and manner of appointment, nature of appointment, length of service, the ground on which the termination order has been set aside and the delay in raising the dispute before grant of relief in an industrial dispute.

12. In the decision reported in 2014 (1) Mh.L J-151 (Supra), the Hon'ble Apex Court have held that:-

"Industrial Disputes Act (14 of 1947), S. 25-F-Respondent workman had put in more than 240 days service in a year when his services came to be terminated- Non- compliance of Section 25-F. Labour Court awarded reinstatement with continuity of service without backwages- Respondent workman was out of service for a long period- Order passed by Labour Court substituted by an award of compensation of Rs. 1 Lakh."

In the light of the principles enunciated by the Hon'ble Apex Court as mentioned above, now, the present case in hand is to be considered. In this case, it is admitted that the workman was engaged as a daily wager from 01.06.1996 to 30.11.2000. In a case such as the present one, it appears that the relief of reinstatement cannot be justified and instead monetary compensation would meet the ends of justice. Taking into consideration the facts and circumstance of the case, in my considered opinion, the compensation of Rs. 60,000 (Rupees sixty thousand only) in lieu of reinstatement shall be appropriate, just and equitable. Hence, it is ordered:-

ORDER

The action of the management of Telecom District Manager, Sanchar Nigam Limited, Bhandara (Mah) in terminating the services of Shri Mohanlal Tulsiram Tawade w.e.f. 30.08.2000 is illegal, improper & unjustified. The workman is entitled for monetary compensation of Rs. 60,000 (Rupees sixty thousand only) in lieu of reinstatement. He is not entitled for any other relief. The party no.1 is directed to pay the monetary compensation of Rs. 60,000 (Rupees sixty thousand only) to the workman, Shri Mohanlal Tulsiram Tawade within 30 days of the publication of the award in the official gazette failing which, the amount will carry interest at the rate of 6 per cent per annum.

J. P. CHAND, Presiding Officer

नई दिल्ली, 24 मार्च, 2014

का.आ. 1217.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार डिप्टी डायरेक्टर नवोदय विद्यालय, पुणे के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या सीजीआईटी/नागपुर/41/2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-03-2014 को प्राप्त हुआ था ।

[सं. एल-42012/45/2008-आईआर (डीयू)]
पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 24th March, 2014

S.O. 1217.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. CGIT/NGP/41/2009) of the Central Government Industrial Tribunal/Labour Court, Nagpur now as shown in the

Annexure in the Industrial Dispute between the employers in relation to the management of the Dy.Director, Navodaya Bidyalaya, Pune & Others and their workman, which was received by the Central Government on 24/03/2014.

[No. L-42012/45/2008-IR(DU)]

P. K. VENUGOPAL,Section Officer

ANNEXURE

BEFORE SHRI J.P.CHAND, PRESIDING OFFICER, CGIT-CUM-LABOURT COURT, NAGPUR

Case No. CGIT/NGP/41/2009 Date: 26.02.2014.

Party No. 1 : The Dy. Director,
Navodaya Vidhyalaya Samittee,
Regional Office, 270,
Senapati Bapat Road,
MSFC Ltd., 2nd Floor,
B-Wing Bhamburda
Pune-16.

: The Principal, Jawahar Navodaya Vidhyalaya, Navegaon Khari,
Tq. Parseoni, Nagpur.

Versus

Party No.2 : Shri Satish S. Shende,
C/o. Sharda Dhore Lumbini Nagar,
Near Manchalwar House,
Mankapur, Nagpur.

AWARD

(Dated: 26th February, 2014)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of Jawahar Navodays Vidhyalaya and their workman, Shri Satish Shende, for adjudication, as per letter No.L-42012/45/2008-IR (DU) dated 21.01.2010, with the following schedule:-

> "Whether the action of the management of Jawahar Navodaya Vidhyalaya, Nagpur in terminating the services of their workman, Shri Satish Suryabhan Shende w.e.f. 14.02.2006 is legal and justified? If not, what relief the workman is entitled to?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the workman, Shri Satish Shende, ('the workman" in short), filed the statement of claim and the management of Jawahar Navodaya Vidhyalaya, ("Party No. 1" in short) filed their written statement.

The case of the workman as presented in the statement of claim is that on the basis of the names sponsored by the Employment Exchange and the recommendations of the selection committee, he was appointed as an electrician-cum-plumber by party no.1, in the Jawahar Navodaya Vidhyalaya, Khairi, Nagpur, by the memorandum dated 07.02.1998 and he was in continuous service of party no.1 from the date of his appointment till 10.10.2005 and on 10.10.2005, the Principal of the school in most illegal and arbitrary manner and by keeping all the provisions of law at bay did not allow him to come on duty and threatened him of dire consequences, in case of his entering the premises of the school and the Principal, Shri Ramdeo joined the said post on 05.09.2005 and for the first time in his entire service period, he was served with a warning letter on the allegation that due to his negligence, seventy fans of the hostel were not working, for which the students were suffering from viral fever and malaria and water was being wasted and he gave an oral explanation to the same and by a memorandum dated 04.10.2005, the Principal gave him a final warning, in which it was stated that he (workman) was not doing his duties properly and on 10.10.2005, he gave a detailed reply to the said warning letter, denying all the allegations made against him and on 11.10.2005, when he went for duty, the principal did not allow him to sign the muster roll without assigning any reason and he was also restrained from attending his duty without any valid reason, even though, he was neither suspended nor terminated from services and virtually he was driven out from the room allotted to him by the party no.1 and all his belongings and property were locked inside the said room and he was restrained from fetching his belongings and the same are still locked inside the said room.

The further case of the workman is that the party no.1 deliberately used to give him written information to join duty, but whenever, he went to join duty, the Principal did not allow him to join, but on the contrary, he was being threatened by the Principal of dire consequences and left with no other alternative, he served a notice on party no.1 through his advocate to allow him to resume duty and to sign the muster roll and to withdraw the warnings issued against him unconditionally and even after service of the notice, the party no.1 failed to take any action and the height of illegality and arbitrariness on the party of party no.1 can clearly be demonstrated from the fact that after all the developments as mentioned above,the party no.1 terminated his services on 13.02.206 and he repeatedly approached the authorities requesting them to take him on the job, but all his efforts went futile and left with no alternative, he approached the Labour Commissioner and as his services were wrongfully terminated, he is entitled for reinstatement in service with full back wages and to get back his belongings.

3. The party no.1 in the written statement has pleaded inter-alia that the present reference as made by the Government is untenable as there was no industrial dispute

in existence and the workman was engaged on contractual basis, by order dated 15.02.2005 and the contract agreement was reduced into writing between the parties on 16.02.2005 and as per the contractual agreement, the workman was engaged for a period of one year i.e. up to 15.02.2006 and after the said contractual period coming to an end, the same was not renewed and the dispute was raised before the Asstt. Labour Commissioner and even though a failure report was submitted by the Asstt. Labour Commissioner, the Central Government rightly turned down to refer the dispute vide their communication dated 09.07.2008 and the reference was made by the Government in view of the order passed by the Hon'ble High Court, in Writ Petition no. 4527/2008 on 13.11.2009 and there was no consideration of the merit of the case by the Hon'ble High Court and as existence of an industrial dispute was not there, the reference is to be answered in negative.

It is further pleaded by party no.1 that the workman was engaged on contractual basis as per the agreement dated 16.02.2005 for a period of one year and he very well knew that his contractual engagement would come to an end on 15.02.2006 and as such, it cannot be said that there was any termination of the service of the workman and the conduct of the workman was not befitting to the contractual engagement and he committed breach of contract agreement and after Diwali vacation, i.e. 06.11.2005, the workman did not discharge his contractual obligation under the agreement dated 16.02.2005, however, he was permitted to discharge his contractual obligation till the expiry of contractual period on 15.02.2006, inspite of enough lapses on his part and the contractual period having expired, there is no course for the workman to seek any relief and the reference has to be answered in the negative.

4. In order to prove their respective claims, both the parties have led oral evidence, besides placing reliance on documentary evidence.

The workman has examined himself as a witness in support of his case. In his evidence on affidavit, the workman has reiterated the facts mentioned in the statement of claim. However, in his cross-examination, the workman has admitted that as per the document, Ext. W-II, he was appointed on the post of Electrician-cum-Plumber on contract basis for two years and in Ext. W-II, it was mentioned that in case the conditions imposed in the said appointment letter were acceptable to him, then only to join the said post and accepting the conditions imposed in Ext, W-II, he joined in service and submitted his joining report on 16.02.1998 as per Ext. W-III and his contractual appointment was extended for one year from 16.02.2000 to 15.02.2001 as per letter dated 14.03.2000, Ext. W-IV and his contractual appointment was again extended for two years from 16.02.2001 to 15.02.2003 as per the letter dated 04.03.2002, Ext. W-V. The workman has denied the suggestion that his contractual appointment was not extended after 15.02.2003, but he has admitted that he was not filed any document to show that his contractual appointment was extended from 15.02.2003.

The workman in his cross-examination has further admitted that by order dated 15.02.2005, he was appointed purely on contractual basis as electrician-cum-plumber from 16.02.2005 to 14.06.2006 and he accepted the appointment order and executed a contract agreement with the school and Exts. M-I and M-II are his appointment order dated 15.02.2005 and the contract agreement executed by him respectively. The workman has also admitted that he has not filed any document to show that from 16.02.2003, he worked continuously till 10.10.2005. The workman has also admitted that he did not lodge any complaint in writing to the higher authority of the Principal regarding the threat given by the Principal on 10.10.2005 or regarding harassment meted out towards him and he has not filed the warning letter dated 23.09.2005, the copy of his explanation, the memorandum dated 04.10.2005 or his explanation dated 10.10.2005. The workman contradicting his own evidence given in his affidavit has stated that he was driven out by the Principal on 07.10.2005 and as per his affidavit, his services were terminated on 13.02.2006 and he cannot assign any reason as to why he submitted the application dated 29.11.2005, Ext. W-VIII to the Principal for payment of Salary from 08.10.2005 till 29.11.2005, though according to him, he was driven out from the school on 07.10.2005.

5. The witness for the party no.1 has also reiterated the facts mentioned in the written statement, in his evidence on affidavit. In his cross-examination, the witness for party no.1 has admitted the suggestion that on 23.09.2005, a warning was given to the workman by the Principal on 23.09.2005, as 70 fans of the hostel were not working. It has been brought in the cross-examination of this witness that 11.10.2005 was a day of vacation. This witness has denied the suggestion that on 10.10.2005, the services of the workman were terminated.

6. During the course of the argument, it was submitted by the learned advocate for the workman that the workman was in continuous service as an electrician-cum-plumber in Jawahar Navodaya Vidhyalaya, Khairi, Nagpur form 07.02.1998 till 10.10.2005 and on 10.10.2005, the then Principal of the school in a most illegal and arbitrary manner and without following the mandatory provisions of the Act, did not allow the workman to come on duty and threatened him of dire consequences in case of his entering into the premises of the school and Shri Ram Deo, who joined as the Principal of the said school on 05.09.2005 started harassing most of the staff and in particular the workman, right from the date of joining and on 23.09.2005, the Principal gave a warning to the workman alleging that due to the negligence of the workman 70 fans of the hostel were not in working condition, the girls were not getting proper water supply and in some portions of the hostel water was being wasted and on 04.10.2005, the Principal gave a final warning

to the workman by the memorandum dated 04.10.2005 on the allegation that the workman was not following his duties properly and on 10.10.2005, the workman gave a detailed reply to the warning and on 11.10.2005, when the workman came on duty, the principal did not allow him to sign the muster roll and restrained him from doing his duties, without assigning any reason and even though, there was no termination order and the Principal of the school deliberately used to give written intimation to the workman to join duty, but whenever the workman went to join duty, he was not allowed to join and instead, he was threatened of dire consequences by the Principal and finding no alternative, the workman sent a legal notice to party no.1 to allow him to join duty and to withdraw the warnings unconditionally, but party no.1 did not take any action in the matter and on 13.02.2006, the party no.1 terminated the services of the workman and such termination is absolutely illegal and arbitrary and against the provisions laid down by law and therefore, the workman is entitled for reinstatement in service with full back wages.

7. Per contra, it was submitted by the learned advocate for the party no.1 that the workman was engaged on contractual basis vide order dated 15.02.2005 and the contract agreement was reduced into writing on 16.02.2005 and the workman was engaged for a period of one year i.e. up to 15.02.2006 and the contract was not renewed further and the workman alongwith his family vacated the room allotted to him and left the school premises with his belongings after the end of the contractual period and it cannot be said that there was any termination of the services of the workman and it is clear from the evidence on record and the admission of the workman in his cross-examination that he had accepted the conditions imposed in his appointment letter and thereafter joined the service and the workman was appointed purely on contract basis, for a period of one year only and since the contractual agreement between the parties was only for a period of one year, the workman was not permitted to work after 15.02.2006, since the contract came to an end and as such, the workman is not entitled to any relief.

8. At this juncture, I think it necessary to mention that it is settled beyond doubt by the Hon'ble Apex Court in a string of decisions that the Tribunal cannot travel outside the terms of reference and the jurisdiction of the Tribunal on industrial disputes is limited to the points specifically referred for its adjudication and matters incidental thereto. So, except the question of the legality of termination of the services of the workman, the other issues raised by the workman cannot be considered.

9. On perusal of the materials on record including the pleadings of the parties and the evidence, both oral and documentary adduced by both the parties and taking into consideration the submissions made by the Learned Advocates for the parties, it is found that the appointment of the workman by party no.1 was contractual appointment for a specific period. From the document, Ext. W-II, it is found that the workman was first appointed on 07.02.1998 as an Electrician-cum-Plumber on contract basis for two years and his contractual appointment was extended from 16.02.2000 to 15.02.2001, vide Ext. W-IV and then from 16.02.2001 to 15.02.2003 as per office order, Ext. W-V. There is no legal evidence on record to show that the contractual appointment of the workman was extended after 15.02.2003 till 15.02.2005 and that the workman worked for the said period with party no.1. It is also found from the evidence on record that as per office order, Ext. M-I the workman was again appointed on contract basis for the period from 16.02.2005 to 14.02.2006 and the workman entered into an agreement as per Ext. M-II and joined duty on 16.02.2005. The workman in his evidence has also admitted that his appointment was on contract basis and he has not filed any document in support of the allegation that he was threatened by the Principal and that he was given warning letter by the Principal on 23.09.2005 and he submitted his explanation to the same.

10. The definition of "retrenchment" has been given in section 2 (oo) of the Act. According to the said definition, "retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action but does not include.

(a) …..

(b) …..

(bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation on that behalf contained therein; or

(c) …..

In this case, the appointment of the workman was purely on contract basis for the period from 16.02.2005 to 14.02.2006. Such appointment was not renewed by the party no.1 further, so the appointment came to an end automatically on the expiry of the contractual period of appointment. So, the termination of the services of the workman w.e.f. 14.02.2006 by party no.1 after the expiry of the contract does not amount to retrenchment and these was nothing wrong in the action of party no.1. Hence, it is ordered:-

ORDER

The action of the management of Jawahar Navodaya Vidhyalaya, Nagpur in terminating the services of their workman, Shri Satish Suryabhan Shende w.e.f. 14.02.2006 is legal and justified. The workman is not entitled to any relief.

J. P. CHAND, Presiding Officer

नई दिल्ली, 24 मार्च, 2014

का.आ. 1218.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सुपरिंटेंडिंग अर्किओलॉजिस्ट आर्कियोलॉजिकल सर्वे ऑफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या सीजीआईटी/नागपुर/10/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-03-2014 को प्राप्त हुआ था ।

[सं. एल-42012/09/2011-आईआर (डीयू)]
पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 24th March, 2014

S.O. 1218.— In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D No. CGIT/NGP/10/2011) of the Central Government Industrial Tribunal/Labour Court, Nagpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Superintending Archeologist, Archaeological Survey of India and their workman, which was received by the Central Government on 24/03/2014.

[No. L-42012/09/2011-IR(DU)]

P. K. VENUGOPAL,Section Officer

ANNEXURE

BEFORE SHRI J.P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/10/2011 Date: 28.02.2014

Party No. 1 : The Superintending Archeologist, Archaeological Survey of India, Prehistory Branch, Old High Court Building, Civil Lines, Nagpur-440001.

Versus

Party No. 2 : Shri Manohar, S/o Shri Mahadeorao Wagh, R/o Satranjipura, Behind Patidar Bhawan, Nagpur.

AWARD

(Dated: 28th February, 2014)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of Archaeological Survey of India and their workman, Shri Manohar M. Wagh, for adjudication, as per letter No. L-42012/09/2011-IR (DU) dated 09.05.2011, with the following schedule:-

"Whether the action of the Superintendent Archaeologist, Archaeological Survey of India, Nagpur, in terminating the services of Shri Manohar S/o Shri Mahadeorao Wagh w.e.f. 31.12.2009 is legal and justified? What relief the workman is entitled to?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the workman, Shri Manohar M. Wagh , ('the workman" in short), filed the statement of claim and the management of Archaeological Survey of India ("Party No. 1" in short) filed their written statement.

The case of the workman as mentioned in the statement of claim is that he was appointed as a labourer with the party no.1 on 05.12.2005 and he completed more than 240 days continuous service with party no.1 and therefore, acquired the status of a permanent employee, but his services were illegally terminated w.e.f. 31.12.2009 orally, without compliance of the provisions of section 25-F and 25-G of the Act and the party no.1 is an industry carrying out systematic activities and even though he was designated as a labourer, he was doing the work of a driver and he was driving the commando jeep and the said post is still vacant and he sent an approach notice on 06.01.2010 to the party no.1 requesting to reinstate him in service, but without any effect and he also made request to make payment of the difference of wages of the post of driver and the labourer, for which he was entitled and he is unemployed and he has no other source of income.

The workman has prayer for his reinstatement in service with continuity and full back wages.

3. The party no.1 in the written statement has pleaded inter-alia that it is not a commercial organization and the provisions of the Act are not applicable to it and all the functions it performs require huge amount, which is funded by the Union of India through Budget Allocation of Central Government and all its activities require only expenditure of huge amount for development and maintenance of the historical monuments and entry fees are charged only on the selected sites to regularize visitors and to meet some part of the expenditure and the purpose of entry fee is not to earn profit, but only to recover some part of the expenditure incurred for maintenance of monuments and it is performing some of the sovereign functions of Government of India and in no way it can be termed as a profit oriented organization and the eligible employees are paid the non-productivity linked bonus contrary to payment of productivity linked bonus by other industries like the Railways etc and as it is not an industry, on that ground itself, the reference is liable to be dismissed.

It is further, pleaded by the party no.1 that the workman was engaged as a casual labourer and such engagement was on the basis of the official requirements

and according to its need for some days and after work was being over, he was being given rest/break and he was again being called upon, when there was need for his engagement for casual labour work and there is no sanctioned post of worker in the Archeological Survey of India, Pre-history branch, Nagpur and the workman was not appointed as stated by him and as the workman was not recruited through employment exchange and by observing procedure of recruitment, his claim of having worked for 240 days is of no substance and the appointment order as mentioned by the workman is actually an official sanction order and such order has been misconceived by the workman as the appointment order and as there was no appointment, the question of termination of the services of the workman does not arise and on 31.12.2009, the workman was given break, as there was no work available and the vacant posts in Archaeological Survey of India are filled in through a proper set of guidelines, which are strictly adhered to by observing all the procedure of selection and there was/is no question of reinstatement of the workman, as his services were not terminated and he was given break, as no work was available for him at that particular time and as and when work will be available, the workman can be called and given work and the workman was communicated to collect his dues (Labour payment) till 31.12.2009 on many occasions telephonically and by a registered A.D. letter and the post of driver and mechanic in the Prehistory branch are Group-C posts and since, there is complete ban on engagement of casual worker for performing of duties of Group-C post, vide OM dated 26.02.1990, the said workman cannot be assigned the said work and any person, who has been appointed without following due procedure of selection and who is engaged as a casual labourer cannot claim any relief, whatsoever, in view of the judgment of the Hon'ble Apex Court in the matter of (Secretary, State of Karnatak Vs. Uma Devi) reported in 2006 SCC (L&S)-753 and therefore, the workman is not entitled to any relief.

4. In support of their respective claims, both the parties have led oral evidence, besides placing reliance on documentary evidence.

The workman has examined himself as a witness in support of his claim. In his examination-in-chief, which is on affidavit, the workman has reiterated the facts mentioned in the statement of claim. In his cross-examination, the workman has admitted that he was working as a driver in Archaeological Survey of India and no appointment order in writing was issued to him by party no.1 and his name was not sponsored by the employment exchange for appointment and there was no interview or examination for his appointment.

5. One Nandini Bhattacharya Sahu, the Superintending Archaeological, ASI, Nagpur has been examined as the only witness on behalf of the party no.1.

The witness for the party no.1 in her evidence on affidavit, has also reiterated the facts mentioned in the written statement. In her cross-examination, this witness has stated that the workman was not appointed, but he was engaged on daily wages and he was engaged on 05.12.2005 for the first time and he was last engaged on 31.12.2009 and she cannot say if the workman worked for more than 240 days from January, 2009 to December, 2009 and she cannot say if the workman was engaged continuously from December, 2005 to December, 2009.

6. At the time of argument, it was submitted by the learned Advocate for the workman that the workman was appointed on 05.12.2005 as a labourer, but he was doing the work of a driver and his services were terminated on 31.12.2009 orally, without following the mandatory provisions of section 25-F and 25-G of the Act and the workman had worked for more than 240 days in each calendar year including in the preceding 12 calendar months of the date of termination of his services and the evidence on records produced by the workman amply proves the same and the party no.1 is an industry and as the termination of the workman is illegal, he is entitled for reinstatement in service with continuity and full back wages.

In support of such contentions, the Learned Advocate for the workman placed reliance on the decisions reported in (2000) 9 SCC-501 (State of U.P. Vs. Rajendra Singh Butola), 1999 II LLJ-30 (Administrator, Municipal Committee, Amloh Vs. Presiding Officer, Labour Court Patiala), 2011 III LLJ-1 (SC) (Devindar Singh Vs. Municipal Council, Sanaur) 2009 III CLR-262 (Maharashtra S R T C Vs. Casteribe Rajya P. Karmachari Sanghathan), 2010 (5) Mh. L.J.-244 (Anoop Sharma Vs. Executive Engineer) and 2008 II CLR-301 (Maharashtra S.S.& H.S Education Vs. Sanjay Krishnarao Shrungare).

7. Per contra, it was submitted by the Learned Advocate for the party no.1 that the party no.1 is not an industry and it is performing some of the sovereign functions of Government of India and in any way, it can be termed as a profit oriented organization and as such, the provisions of the Act are not applicable to party no.1 and therefore, the reference is not maintainable.

It was further submitted by the Learned Advocate for the party no.1 that the workman was never appointed as per the Rules of recruitment and he was engaged as a casual worker as and when required and after the services of the workman were utilized for casual work, he was given break on 31.12.2009 and as there was no termination, there was no question of compliance of the provisions of section 25-F of the Act or giving notice or payment of retrenchment compensation and in view of the judgment of the Hon'ble Apex Court in the case of Secretary, State of Karnataka Vs. Uma Devi reported in 2006 SCC (L&S)-753, the workman is not entitled to any relief.

8. The first issue raised by theLearned Advocate for the party no.1 is that the party no.1 is not an industry as defined under section 2(j) of the Act and consequently the workman is not a workman as per the definition of section 2(s) of the Act and therefore, the reference is not maintainable and the workman was a daily paid casual labour and he does not have any right to claim service in Government department and as such, none of the provisions, much less, section 25-F and section 25-G of the Act are applicable and as the workman was a daily paid casual labourer, there was no question of termination or retrenchment of the workman and the workman is not entitled to any relief.

8A. Perused the record including the evidence adduced by the parties. So far the first contention raised by the Learned Advocate for the party no.1 that party no.1 is not an industry is concerned, by taking into consideration the pleadings of the parties and applying the principles enunciated by the Hon'ble Apex Court in the case of Bangalore Water Supply Vs. Rajappa, reported in 1978 LAB IC-467, to the present case in hand, it is found that the party no.1 is an industry and there is no force in the contention raised by the Learned Advocate for the party no.1 in that regard.

9. The next point raised by the learned advocate for the party no.1 is that the workman was a casual worker and he was engaged as and when required and in view of the judgment of the Hon'ble Apex Court reported in 2006 SCC (L&S)-753 (Supra), the workman is not entitled to any relief.

10. From the materials on record including the oral evidence and documentary evidence, it is clear that the workman was engaged on daily wages basis as a casual worker and he worked as a driver with party no.1 continuously from 05.12.2005 to 31.12.2009 and he had completed 240 days of work in the preceding 12 calendar months of the date of his termination i.e. 31.12.2009.

It is clear from the principles enunciated by the Hon'ble Courts in the decisions cited by the Learned Advocate for the workman that a person engaged for doing casual work is also governed by the provisions of the Act. It is also settled beyond doubt that the source of employment, the method of requirement, the terms and conditions of employment/contract of service, the quantum of wages/pay and the mode of payment are not at all relevant for deciding whether or not a person is a workman within the meaning of section 2 (S) of the Act. It is also well settled that the provisions contained in section 25-F of the Act are mandatory and the termination of the service of the workman, amounts to retrenchment within the meaning of section 2 (oo) of the Act and the termination without giving one month's notice or pay in lieu thereof and retrenchment compensation is null and void and illegal.

So far the decision of the Hon'ble Apex Court reported in (2006) SCC (L&S)- 753 (Supra) is concerned, with respect, I am view that the same is distinguishable as the question of violation of the mandatory provisions of section 25-F of the Act was not at all under consideration before the Hon'ble Apex court in the case of Umadevi. Hence, with respect, I am of the view that the said decision has no application to the present case at hand.

11. Now, the question remains for consideration is as to what relief or reliefs, the workman is entitled. Placing reliance on the decision reported in 2010 (5) Mh. L.J.-244 (Supra), it was submitted by the Learned Advocate for the workman that the workman is entitled for reinstatement in service with continuity and full back wages.

However, at this juncture, I think it necessary to mentioned about the principles enunciated by the Hon'ble Apex Court in this regard in the decision reported in (2013)5 SCC-136 (Asstt. Engineer, Rajsthan Development Corporation Vs. Gitam Singh).

12. The Hon'ble Apex Court in the decision reported in (2013) 5 SCC-136 (supra) after taking in to consideration a large number of decisions delivered by the Hon'ble Apex Court earlier, including the decisions reported in 2011 II CLR-461 (Devinder Singh Vs. Municipal council, Sonaur, (2010) 3 SCC-192 (Harjinder Singh Vs. Punjab State Warehousing Corporation) and (2010) 9 SCC-126 (Incharge Officer Vs. Shankar Setty.) have been pleased to hold that:-

> "In our view, Harjinder Singh and Devinder Singh do not lay down the proposition that in all cases of wrongful termination, reinstatement must follow. This court found in those cases that judicial discretion exercised by the Labour Court was disturbed by the High Court on wrong assumption that the initial employment of the employee was illegal. As noted above, with regard to the wrongful termination of a dialy wager, who had worked for a short period, this court in long line of cases has held that the award of reinstatement cannot be said to be proper relief and rather award of compensation in such cases would be in consonance with the demand of justice. Before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors, including the mode and manner of appointment, nature of appointment, length of service, the ground on which the dispute before grant of relief in an industrial dispute.
>
> In the light of the principles enunciated by the Hon'ble Apex Court as mentioned above, now, the present case in hand is to be considered. In this case, it is admitted that the workman was engaged as a daily wager on 05.12.2005. It is also found that he continued as such till 31.12.2009, when he was terminated from services by party no.1. In a case such as the present one, it appears that the relief of reinstatement cannot be justified and instead monetary compensation would meet the ends of

justice. Taking into consideration the facts and circumstance of the case, in my considered opinion, the compensation of Rs. 50,000/- (Rupees fifty thousand only) in lieu of reinstatement shall be appropriate, just and equitable. Hence, it is ordered:-

ORDER

The action of the Superintendent Archaeologist, Archaeological Survey of India, Nagpur, in terminating the services of Shri Manohar S/o Shri Mahadeorao Wagh w.e.f. 31.12.2009 is illegal and unjustified. The workman is entitled for monetary compensation of Rs. 50,000/- (Rupees fifty thousand only) in lieu of reinstatement. He is not entitled for any other relief. The party no.1 is directed to pay the monetary compensation of Rs. 50,000/- to the workman Shri Manohar S/o Shri Mahadeorao Wagh within 30 days of the publication of the award in the official gazette failing which, the amount will carry interest at the rate of 6 percent per annum.

J. P. CHAND, Presiding Officer

नई दिल्ली, 31 मार्च, 2014

का.आ. 1219.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार चीफ जनरल मैनेजर मद्रास टेलीफोन्स के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 480, 481, 483, 484/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 28-03-2014 को प्राप्त हुआ था ।

[सं. एल-40012/167/96-आईआर (डीयू),
सं. एल-40012/166/96-आईआर (डीयू),
सं. एल-40012/164/96-आईआर (डीयू),
सं. एल-40012/163/96-आईआर (डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 31st March, 2014

S.O. 1219.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D No. 480, 481, 483, 484/2001) of the Central Government Industrial Tribunal/Labour Court, Chennai now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Chief General Manager, Madras Telephones and their workmen, which was received by the Central Government on 28/03/2014.

[No. L-40012/167/96-IR(DU),
No. L-40012/166/96-IR(DU),
No. L-40012/164/96-IR(DU),
No. L-40012/163/96-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL- CUM - LABOUR COURT, CHENNAI

Monday, the 10th March, 2014

Present : K.P. PRASANNA KUMARI, Presiding Officer

I.D. Nos. 480, 481, 483 and 484 of 2001

[In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), between the Management of Madras Telephones, Madras and their workman]

BETWEEN

1. Sri G. Ganesh	:	1st Party/1st Petitioner
2. Sri D. Daniel	:	1st Party/2nd Petitioner
3. Sri R. Seethapathy	:	1st Party/3rd Petitioner
4. Sri R. Munirathinam	:	1st Party/4th Petitioner

AND

The Chief General Manager : 2nd Party/Respondent
Madras Telephones
Madras-600010

Appearance:

For the 1st Party/Petitioners : Sri J. Muthukumaran, Advocate

For the 2nd Party/Respondent : Sri R.T.S. Kannan, Advocate

S.No.	I.D.No.	Reference No.& Date	Name of the I Party S/Sri	Name of the II Party	Appearance for Workman	Appearance for Respondent
1.	480/2001	L-40012/167/96-IR(DU) dated 04.02.1998	G. Ganesh	The Chief General Manager, Madras Telephones Madras-600010	Sri J. Muthukumaran, Advocate	Sri RTS Kannan, Advocate
2.	481/2001	L-40012/166/96-IR(DU) dated 04.02.1998	D. Danial	The Chief General Manager, Madras Telephones Madras-600010	Sri J. Muthukumaran, Advocate	Sri RTS Kannan, Advocate
3.	483/2001	L-40012/164/96-IR (DU) dated 04.02.1998	R.Seethapathy	The Chief General Manager, Madras Telephones Chennai-600010	Sri J. Muthukumaran, Advocate	Sri RTS Kannan, Advocate
4.	484/2001	L-40012/163/96-IR(DU) dated 04.02.1998	R. Munirathinam	The Chief General Manager, Madras Telephones Chennai-600010	Sri J. Muthukumaran, Advocate	Sri RTS Kannan, Advocate

COMMON AWARD

The Central Government, Ministry of Labour & Employment vide the above order of references referred the IDs mentioned above to the Industrial Tribunal, Madras for adjudication. The IDs were numbered as ID 26/98, 27/98, 29/98 and 30/98 respectively After this Tribunal was established these IDs were transferred to this Court for adjudication. On taking them on file ID 26/1998 was renumbered as ID 480/2001, ID 27/98 was renumbered as ID 481/2001, ID 29/98 was renumbered as ID 483/2001 and ID 30/98 was renumbered as ID 484/2001 respectively.

2. The schedule mentioned in the orders of reference in the above IDs are as under:

ID 480/2001

"Whether the action of the management of Madras Telephones, Madras-10 in terminating the services of Sri G. Ganesan, Casual Labour w.e.f. 14.04.1995 is justified or not? If not justified to what relief he is entitled?"

ID 481/2001

"Whether the action of the management of Madras Telephones, Madras-10 in terminating the services of Sri D. Danial, Casual Labour w.e.f. 14.04.1995 is justified or not? If not justified to what relief he is entitled?"

ID 483/2001

"Whether the action of the management of Madras Telephones, Madras-10 in terminating the services of Sri R. Seethapathy, Casual Labour w.e.f. 14.04.1995 is justified or not? If not justified to what relief he is entitled?"

ID 484/2001

"Whether the action of the management of Madras Telephones, Madras-10 in terminating the services of Sri R. Munirathinam, Casual Labour w.e.f. 14.04.1995 is justified or not? If not justified to what relief he is entitled?"

3. The averments in the Claim Statement in ID 480/2001 in brief are these:

The petitioner was employed as a Wash Boy in the departmental canteen of the Respondent at Flower Bazar, NSC Bose Road, Chennai in 1988. The Canteen is run round the clock in three shifts and caters to the needs of nearly 1500 employees in the Office of the Respondent. There are 21 permanent employees and eight casual labourers including the petitioner in the Canteen. Pursuant to a judgment of the Supreme Court, the Respondent issued an Office Memorandum dated 29.01.1992 stating that employees of the non-statutory departmental / cooperative canteen / tiffin rooms located in Central Government office should be treated as Government Servants with effect from 01.10.1991. Casual labourers recruited prior to 30.03.1985 were regularized in terms of Casual Labourers (Grant of Temporary Status and Regularization) Scheme, 1989. However, the Respondent issued a notice dated 15.03.1995 to the petitioner under Section-25(F) of the ID Act stating that it is proposing to disengage the petitioner w.e.f. 14.04.1995 as there was no work in the Canteen. Compensation equivalent to 15 days wages for every completed year of continuous service or part thereof was paid to the petitioner. The petitioner had challenged this retrenchment notice before the Administrative Tribunal. This was dismissed on the ground that the petitioner is to approach the forum under the Industrial Disputes Act. Thereafter the petitioner has raised the dispute before the Regional Labour Commissioner, Madras. Consequent to the failure of the conciliation, the dispute has been referred to this Tribunal. The reasons given in the retrenchment notice for retrenchment of the petitioner are incorrect. It is incorrect to state that there is no work in the Canteen. The Respondent has been engaging workers on contract basis for its day-to-day work. Persons from other Canteen units have been transferred to the unit in which the petitioner had worked also. Since the petitioner has been continuously working since 1988, he is entitled to be treated as permanent on completion of 480 days of continuous work. An award may be passed holding that termination of the petitioner from service is illegal and invalid and that he is entitled to continuity of service with full back wages.

4.The Respondent has filed Counter Statement contending as follows :

It is incorrect to state that the Canteen was catering to the needs of 1500 employees. Due to change in technology, now there are only around 700 employees in the concerned station. The work load of the Canteen has reduced consequently. Only when there was exigency like heavy absenteeism or specific extra works to be undertaken, persons were engaged for short duration on payment from Canteen proceeds on contract basis. The petitioner was paid only from Canteen proceeds. Since he was not engaged by the Respondent or was on its muster roll or was paid from department funds, the petitioner could not be considered as casual labourer of the department. It is denied that the petitioner has completed 480 days of continuous service. The petitioner is not entitled to any relief.

5. The Claim Statements in ID 481/2001, 483/2001 and 484/2001 are verbatim reproduction of the Claim Statement filed in ID 480/2001. The only difference is that the petitioners are different. All the petitioners were working in the Canteen said to be run by the Respondent at the premises of the Telephone Exchange at Flower Bazar, NSC Bose Road, Chennai. The case of all the petitioners is that 8 persons including them were employed as Casual

Labourers and that they were working in the Canteen as Wash Boys from 1988. All of them were disengaged by the Respondent by retrenchment notice dated 15.03.1995. They were all given compensation equivalent to 15 days wages for every completed year of continuous service.

6. The case that is advanced by the Respondent in all the IDs is that the petitioners are not casual labourers of the Respondent since they were not paid by the department. According to the Respondent, they were paid from the Canteen funds and therefore there was no question of their being treated as casual labourers of Respondent itself.

7. The four Claim Petitions have a chequered career. Originally, IDs 483/2001 and 484/2001 were disposed by this Tribunal directing to reinstate the petitioners with back wages and other consequential benefits. In ID 480/2001 and ID 481/2001 the Tribunal had declined any relief to the workmen on the ground that they have no legal right to claim employment with the Respondent as they have never been appointed in terms of the relevant rules or in adherence to Article-14 and 16 of the constitution. The petitioners in ID 480/2001 and ID 481/2001 had filed Writ Petitions challenging the order of this Court declining to grant relief to them. The Hon'ble High Court considered all these Writ Petitions together and disposed them by a common order dated 01.08.2012 restoring the IDs and directing this Tribunal to dispose the four disputes in the light of the settled legal principles.

8. The four IDs were tried separately. In ID 480/2001 the petitioner was examined as WW1 and Ext.W1 was marked on his side. In ID 481/2001, the petitioner was examined as WW1 and Ext.W1 was marked. In ID 483/2001, the petitioner was examined as WW1 and Ext.W1 to Ext.W16 were marked on his side. In ID 484/2001, the petitioner was examined as WW1 and Ext.W1 to Ext.W10 were marked on his side. In none of the IDs the Respondent has adduced any oral or documentary evidence.

9. **The points for consideration in all these IDs are**:

(i) Whether the Respondent is justified in terminating the service of the respective petitioners?

(ii) What is the relief to which the petitioners are entitled?

10. Though trial of the four cases were conducted separately, a common award is passed in the four cases since the issue to be decided in all the cases are one and the same. All the petitioners have claimed to have been working in the Canteen run by the Respondent as casual labourers for a long period. They have claimed that because of such continuous service and their having completed 480 days of continuous work, they are entitled to have permanent status as workman under the Respondent. So a common order will suffice for all the IDs.

The Points

11. The petitioners in all the Claim Petitions have contended that their termination from the service of the Respondent is illegal and they are entitled to reinstatement in service with continuity of service, back wages and other benefits. All these petitioners had been working as Wash Boys in the Canteen run at the premises of the Office of the Respondent at Flower Bazar, NSC Bose Road, Chennai. As seen from the Claim Statements all have started work in the Canteen in the year 1988 as Casual Labourers. According to them, the Casual Labourers recruited prior to 13.03.1985 were regularized in terms of Casual Labourers (Grant of Temporary Status and Regularization) Scheme, 1989. However, the petitioners were given notice under Section-25F of the Industrial Disputes Act on 15.03.1995 stating that they are being disengaged from service from 14.04.1995. According to them, the decision to retrench them, while those persons who were working prior to 13.03.1985 were regularized is not justified.

12. The Respondent has not disputed the claims of the petitioners that they were working as casual labourers in the Canteen. However, according to the Respondent, the case of the petitioners that they were working under the Respondent is not correct. According to the Respondent, the petitioners were being paid from the proceeds of the Canteen. They are not in the muster roll of the Respondent and were not paid from departmental funds. They could not be treated as casual labourers of the Respondent also, for this reason.

13. All the petitioners have impliedly or directly admitted in their cross-examination that they could not have been working directly under the Respondent. Though, the petitioner in ID 480/2001 has claimed that the Respondent has been paying wages to him directly, he has not produced any documents to show this. The petitioner in ID 481/2001 also has not produced any document to show payment of wages by the Respondent directly. According to the petitioner in ID 483/2001, he was not given any pay slip though he was made to sign the voucher. He admitted that he was not given any appointment order. This is the evidence given by the petitioner in ID 484/2001 also. Thus there is no evidence at all to show that the petitioners were working under the Respondent directly, in spite of the fact that they are working in the Canteen run for the benefit of the employees of the Respondent in the Office situated at Flower Bazar, NSC Bose Road.

14. In fact the High Court of Madras has decided the status of the Canteen in which the petitioners were working, in a case of similar nature and this finding has become final also. A Casual Labourer employed in the Canteen had approached the State Industrial Tribunal, Madras and had obtained an order for reinstatement. This order was challenged before the Hon'ble High Court and the Single Bench of the High Court dismissed the Writ Petition filed

by the Respondent challenging the order. Against this, the Respondent had filed Writ Appeal and this has been considered by the Division Bench alongwith two other similar Writ Appeals. On behalf of the petitioners the copy of the order in the Writ Appeal as well as in the Writ Petition are produced. The Division Bench has considered the status of the Canteen in which the petitioners were working. Referring to the precedents the High Court has observed that the Canteen in question is not a statutory Canteen and that the workers should produce materials to show that there was obligation on the employer to provide a Canteen and the Canteen service was part of the service conditions of the employees and as such the Canteen becomes part of the establishment consequent to which the workers would become employees of the Management. The High Court then observed that the workers have no case that the Management was obliged to run a Canteen or that providing a Canteen was part of the service conditions of the employee. The Canteen was run in the premises of the Office of the Respondent. Referring to this, the High Court has observed that the fact that the Canteen was located in the premises of the department would not convert non-statutory Canteen into a statutory one. The High Court has referred to the fact that the Management has taken the contention that wages were paid only out of the proceeds of the Canteen and that the workers have no case that materials were provided only by the department, subsidy was given to provide food at subsidized rate or that the management exercised administrative, supervisory and financial powers in the matter of conducting the Canteen. The High Court further held that so long as it is not the case of the workers that the Management was bound to provide a Canteen either on account of statutory compulsion or as part of service regulation, it cannot be concluded that the employees have become part of the establishment and should be treated as employees of Madras Telephones i.e. the Respondent. On the basis of the above finding, the award of the Tribunal confirmed in the Writ Petition was set aside in the Writ Appeal.

15. It is clear from the order in the Writ Petition and Appeal that the disputes were raised by other casual workers engaged in the Canteen in question. The finding in the Writ Appeal that the Canteen is not a statutory Canteen, that there is no evidence to show that the Respondent was under an obligation to run a Canteen and that for this very reason the workers concerned are not entitled to reinstatement ties the hands of the petitioners in these disputes as well. The petitioners are not entitled to the relief of reinstatement for this reason itself.

16. The counsel for the Respondent has referred to the decision of the Apex Court in STATE OF KARNATAKA VS. UMA DEVI AND OTHERS reported in 2006 (2) MLJ 326 also in support of their case. The subject matter of the above case was the claim of regularization of persons on temporary employment. The Apex Court has held that the persons who accept an engagement either temporary or casual in nature is aware of the nature of the employment and he accepts the employment with his eyes open. It was further held that those who have been employed on daily wages or temporarily or on contract basis have no fundamental right to claim to be absorbed in service. They cannot be said to be holders of a service, since a regular appointment could be made only by making appointments consistent with the requirements of Artcle-14 and 16 of the Constitution. The right to be treated equally with the other employees employed on daily wages cannot be extended to a claim for equal treatment with those who were regularly employed. Since that would be treating un-equals as equals, it was held. The Respondent has also referred to the decision UNION OF INDIA AND ANOTHER VS. ARULMOZHI INIARASU AND OTHERS reported in 2011 (7) SCC 397 in this respect. In this decision, the Apex Court has reiterated the dictum laid down in UMA DEVI case referred to above. The Apex Court has observed that in the letter of appointment the concerned workers were told in unambiguous terms that their appointments were temporary and would not confer any right to claim any permanent post in the department.

17. In the present case, none of the petitioners are employees of the Respondent. They are only Casual workers in the Canteen run for the benefit of employees of the department. There is no evidence to show that they were paid by the department. So the case that they were paid out of the proceeds of the Canteen is to be accepted. According to their own case, they are only casual labourers. There is no case for them that a promise or an offer was ever made to them that they would be regularized. The fact that they were working in the Canteen for some years does not entitle them to claim the status of permanent workers. They are not entitled to the relief of reinstatement in service, for the above reasons.

18. Though the relief claimed in the Claim Petitions is continuity of service on setting aside the termination, probably because of the awareness of the effect of the decision in the Writ Appeal, the petitioners are asking for a lesser relief only, in the written arguments submitted by them. It is stated in their written argument that as directed by the High Court in the Writ Petition filed against order of State Tribunal, back wages were deposited by the Respondent and the concerned workers was permitted to withdraw 50% of the back wages immediately and that on disposal of the Writ Appeal they were permitted to withdraw balance 50% also and for this reason the petitioners who are similarly placed employees are also entitled to the same relief. This Tribunal is not in a position to grant even this relief to the petitioners. The workers involved in the Writ Appeal had the fortune to have the back wages deposited before the Tribunal. The workers were allowed to withdraw the balance 50% amount on their undertaking that they would withdraw their claim for regularization. In the present

petitions, there was no direction for deposit. When there is a finding that the petitioners are not entitled to reinstatement or regularization there is no question of a direction to the Respondent to pay back wages to them.

19. It is seen from the Claim Statement itself that notice under Section-25F of the Act was issued to all the petitioners before they were disengaged from work. All of them were paid compensation equivalent to 15 days wages for every completed year of continuous year, even as admitted by the petitioners in their respective Claim Statements. So they are not entitled to any amount towards compensation also, they having already received the same. None of the petitioners are entitled to any relief in the circumstances. The points are found against the petitioners.

In view of my discussion above, all the references are answered against the petitioners. Awards are passed accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 10th March, 2014)

K. P. PRASANNA KUMARI, Presiding Officer

Witness Examined in ID 480/2001

For the 1st Party/Petitioner : WW1, Sri G. Ganesh

For the 2nd Party/Management : None

Documents Marked :

On the side of the petitioner in ID 480/2001

Ex.No.	Date	Description
Ex.W1	-	Certificate issued by the Madras Telephones

Witness Examined in ID 481/2001

For the 1st Party/Petitioner : WW1, Sri D. Daniel

For the 2nd Party/Management : None

D**ocuments Marked** :

On the side of the petitioner in ID 481/2001

Ex.No.	Date	Description
Ex.W1	-	Certificate issued by the Madras Telephones

Witness Examined in ID 483/2001

For the 1st Party/Petitioner : WW1, Sri R. Seethapathy

For the 2nd Party/Management : None

Documents Marked :

On the side of the petitioner in ID 483/2001

Ex.No.	Date	Description
Ex.W1	-	Certificate issued by the Madras Telephones
Ex.W2	-	Particular issued by the management regarding the number of days the petitioner had worked during the years 1988 to 1993
Ex.W3	-	Letter from the petitioner to the Regional Labour Commissioner
Ex.W4	18.01.1993	Sanction Memo issued by the Madras Telephones
Ex.W5	23.02.1993	Internal Correspondence
Ex.W6	13.01.1994	Letter from the petitioner to the management
Ex.W7	10.02.1994	Letter from the petitioner to the Management
Ex.W8	15.03.1995	Order under Section-25F of the ID Act 1941
Ex.W9	31.03.1995	Voucher issued by the Department Canteen
Ex.W10	26.08.1996	Minutes of Joint Discussion and Conciliation Proceedings
Ex.W11	25.04.1995	Order of the Central Administrative Tribunal
Ex.W12	5/1996	Letter from the petitioner to the Assistant Labour Commissioner © II
Ex.W13	24.06.1996	Letter from the Chairman TMX Canteen to the Assistant Labour Commissioner (C) II
Ex.W14	23.08.1996	Letter to the Registrar (Through) RLC Central
Ex.W15	22.05.2000	Award in No. 69/99 Hon'ble Tribunal held that his termination is illegal and not justified and that he is entitled to be reinstated in service with back wages and continuity of service
Ex.W16	23.02.2006	Order in WP No. 858/2002 set aside the ex-parte orders in the ID No. 484/2001

Witness Examined in ID 484/2001

For the 1st Party/Petitioner : WW1, Sri R. Munirathinam

For the 2nd Party/Management : None

Documents Marked :

On the side of the petitioner in ID 484/2001

Ex.No.	Date	Description
Ex.W1	-	Certificate issued by the Madras Telephones
Ex.W2	-	Letter from the petitioner to the Regional Commissioner of Labour
Ex.W3	13.01.1994	Letter from the petitioner to the management
Ex.W4	15.03.1995	Order proposing the disengagement of the petitioner
Ex.W5	25.04.1995	Order of the Central Administrative Tribunal
Ex.W6	28.06.1996	Minutes of joint discussion between the management and the workmen
Ex.W7.	23.08.1996	Letter from the management to the Registrar through the Regional Commissioner of Labour
Ex.W8	26.08.1996	Minutes of joint discussion
Ex.W9	22.05.2000	Award in No. 69/99 Hon'ble Tribunal held that his termination is illegal and not justified and that he is entitled to be reinstated in service with back wages and continuity in service
Ex.W10	23.02.2006	Order in WP No. 858/2002 set aside the ex-parte orders in the ID No. 483/2001.

नई दिल्ली, 31 मार्च, 2014

का.आ. 1220.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सीनियर सुपरिंटेंडेन्ट ऑफ पोस्ट ऑफिसिस, डिपार्टमैंट ऑफ पोस्ट, डिंडीगुल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 29/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 28-03-2014 को प्राप्त हुआ था ।

[सं. एल-40012/89/2010-आईआर (डीयू)]
पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 31st March, 2014

S.O. 1220.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D. No. 29/2011) of the Central Government Industrial Tribunal/Labour Court Chennai now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Senior Superintendent of Post Offices, Department of Post, Dindigul and their workman, which was received by the Central Government on 28/03/2014.

[No. L-40012/89/2010-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Thursday, the 20th March, 2014

Present : K.P. PRASANNA KUMARI, Presiding Officer

Industrial Dispute No. 29/2011

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), between the Management of Senior Superintendent of Post Offices and their workman)

BETWEEN

Sri M. Muruganandam : 1st Party/Petitioner

AND

The Senior Superintendent of Post Offices Department of Post Dindigul Division Dindigul-624001 : 2nd Party/Respondent

Appearance:

For the 1st Party/Petitioner : M/s R. Malaichamy and C. Premkumar, Advocates

For the 2nd Party/Management : Sri B. Sekar, Advocate

AWARD

The Central Government, Ministry of Labour & Employment vide its Order No. L-40012/89/2010-IR (DU) dated 28.03.2011 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is:

"Whether the action of the Management of Senior Superintendent of Post Offices, Dindigul in terminating the service of their workman Sri M. Muruganandam vide Office Memo dated 19.07.2006 is legal and justified? What relief the workman is entitled to?"

2. On receipt of the Industrial Dispute this Tribunal has numbered it as ID 29/2011 and issued notices to both sides. Both sides have entered appearance through their counsel and have filed their claim and counter statement respectively.

3. In order to substantiate his case, the petitioner is seen to have filed Proof Affidavit in lieu of Chief Examination

as early as in November 2012. However, the petitioner has not been making himself available for cross-examination. He was repeatedly absent from Court in spite of direction. No material is available before this Court to substantiate the case of the petitioner. So the petitioner is not entitled to any relief.

4. The reference is answered against the petitioner. An award is passed accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 20th March, 2014).

K. P. PRASANNA KUMARI, Presiding Officer

Witnesses Examined:

For the 1st Party/Petitioner : None

For the 2nd Party/Management : None

Documents Marked:

On the petitioner's side

Ex. No.	Date	Description
	N/A	

On the Management's side

Ex. No.	Date	Description
	N.A.	

नई दिल्ली, 2 अप्रैल, 2014

का.आ. 1221.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बी.सी.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, धनबाद के पंचाट (संदर्भ संख्या 37/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 2-04-2014 को प्राप्त हुआ था ।

[सं. एल-20012/105/2012-आईआर (सीएम-I)]
एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 2nd April, 2014

S.O. 1221.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 37/2013) of the Central Government Industrial Tribunal cum-Labour Court No. 2, Dhanbad as shown in the Annexure in the Industrial Dispute between the management of M/s. BCCL, and their workman, which was received by the Central Government on 2/4/2014.

[F. No. L-20012/105/2012-IR(CM-I)]
M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2), AT DHANBAD

PRESENT :

Shri Kishori Ram, Presiding Officer

In the matter of an Industrial Dispute under Section 10(1)(d) of the I.D.Act., 1947

REFERENCE NO. 37 OF 2013

PARTIES : The Gen.Secretary,
Koyla Ispat Mazdoor Panchayat,
Chatabad, Katras, Dhanbad

Vs.

The General Manager,
Govindpur Area of
M/s. BCCL Sonardih, Dhanbad

APPEARANCES :

On behalf of the workman /Union : Mr. B. B. Pandey, Ld. Advocate

On behalf of the Management : Mr. D. K. Verma, Ld. Advocate

State : Jharkhand Industry : Coal

Dated, Dhanbad, the 24th Feb., 2014

AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Sec. 10(1)(d) of the I.D. Act,1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/105/2012-IR(CM-I) dt. 11.2.2013

SCHEDULE

"Whether the action of the Management of East Katras Colliery of M/s. BCCL in dismissing Shri Singeshwar Bhuiya from the services of the Company from 11/12.6.2001 is fair and justified? To what relief is the concened workman entitled to?

2. Workman Singeshwar Bhuiya, General Secretary, Arjun Singh of the sponsoring Union KIMP, and his Learned Advocate Mr. B. B. Pandey for the Union Representative as well as Mr. D.K. Verma, the Learned Advocate for the O.P./Management present with his authority in this case. By filing the settlement petition in four copies under the signatures of Messrs. P. R. Sengupta and R. Mallick, Sr.Manager (Personnel), Govindpur Area dt. 22.2.2014 and of workman Singheshwar Bhuiya, Sri Arjun Singh, the General Secretary of the Union as well as duly singed by Mr. D.K.Verma,and Mr. B.B. Pandey, the Ld. Advocates for the respective parties today, it has been submitted that both the parties have amicably settled the Industrial dispute related to an issue about the dismissal

of the workman under adjudication as per the terms and conditions of the said petition before the Lok Adalat.

Let an Award be passed in the terms and conditions of the compromise petition filed on behalf of both the parties, forming it an integral part of it which shall be binding upon both the parties. Thus the case is accordingly disposed of.

KISHORI RAM, Presiding Officer

Settlement Petition

Before
The Presiding Officer, CGIT No.II, Dhanbad.
Ref. Case No. 37/2013
Employer in relation to the Management of Govindpur Area III of M/s BCCL and their workmen
The humble petition for compromise through Lok Adalat .
Most respectfully shewth:-

The both the parties are agreed to settle the dispute through Lok Adalat as per term settlement arrived between both parties in Form H.

The workman concerned Sri Singeshwar Bhuia, was dismissed from services for commission of misconduct under clause 26.11.1. of C.S.O. w.e.f. 11/12.06.2001.The Union raised I..D.The Ministry referred the dispute to CGIT NO. 2, Dhanbad with following terms of reference "Whether the action of the Management of East Katras Colliery of M/s. BCCL in dismissing Sri Singheshwar Bhuia from the service from 11/12.06.2001 is fair and justify? To what relief is concerned workman entitled.

On the view to above the management of BCCL has decided that Sri Singeshwar Bhuia,Ex-Minor Loader, P. No. 02938397 of New Akashkinaree Colliery is hereby accepted in fresh appointment as UG Baldi worker with designation as Mazdoor Cat.1 (Initial Basic),.subject to fulfillment of following terms and conditions:

TERMS AND CONDITIONS

1. The workman shall abide the Coal Mines Pension Scheme 1998 and contribution thereof as applicable.

2. For the purpose of payment of Gratuity, the date of joining duty after the approval shall be treated as the date of appointment.

3. The confirmation as permanent employees shall be subject to their performance and completion of 190 days attendance in Underground.

It is therefore prayed that your honor may kindly pass settlement Award.

On behalf of the Management	On behalf of the workman
Sd/-	Sd/-
Sengupta, Chief Manager (P)/ APM Govindpur Area	Sri Singeshwar Bhuia, Ex.Minor Loader, New Akashinaree Colliery

Sd/-	Sd/-
Sri R. Mallick, Sr. Manager (Pers), Govindpur Area	Sri Arjun Singh, General Secretary, KIMP

Countersigned by

Sd/-
Mr. D. K. Verma and B.B.Pandey, Respective Ld. Advocates dt. 24.2.2014

नई दिल्ली, 2 अप्रैल, 2014

का.आ. 1222.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बी.सी.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ संख्या 71/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 2-04-2014 को प्राप्त हुआ था ।

[सं. एल-20012/35/2006-आईआर (सीएम-I)]
एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 2nd April, 2014

S.O. 1222.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 71/2006) of the Central Government Industrial Tribunal cum-Labour Court No. 1, Dhanbad as shown in the Annexure in the Industrial Dispute between the management of M/s. BCCL, and their workman, which was received by the Central Government on 2/4/2014.

[No. L-20012/35/2006-IR(CM-I)]
M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 1), DHANBAD

IN THE MATTER OF A REFERENCE U/S 10(1) (D) (2A) OF I.D. ACT, 1947.

Ref. No. 71 of 2006

Employers in relation to the management of Barora Area of M/s. B.C.C.L.

AND

Their workmen.

Present : Sri Ranjan Kumar Saran, Presiding officer

Appearances:

For the Employers : None

For the workman : Sri S.C. Gour, Advocate

State : Jharkhand Industry : Coal

Dated 18-2-2014

AWARD

By Order No. L-20012/35/2006-IR(CM-I), dated 10/28.07.2006, the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal:

SCHEDULE

" Whether the demand of the Rashtriya Colliery Mazdoor Congress from the management of BCCL , Barora Area-I that Sh. Rajendra Beldar be promoted to grade 'B" w.e.f. 01.01.95 and to Gr. "A" w.e.f. 01.01.98 justified? If so to what relief is the workman entitled?"

2. The case is received from the Ministry of Labour on 25.08.2006. After notice both parties appeared, the Sponsoring Union files their written statement on 28.03.2008. Thereafter the management files their written statement-cum-rejoinder on 01.09.2010 short point to be decided. In the case as to whether promotion as claimed by the workman is proper or not.

3. The workman concerned promoted in excavation category "C" on 01.04.1989 and to Cat. B on 10.10.2000, whereas junior of the workmen Sahadeo Paswan and Kishore Saw were promoted to Cat. B on 29.10.1997. so also consequently, the promotion of workman was delayed from Category B to A category. No reason what so ever shown except flat denial in their written statement. Subsequently the management representative did not contest the case and the same was unattended, though the date of posting of the case was known to the management.

4. Hence Considering the unchallenged evidence and documents. It is ordered the management to give promotion to the workman concerned to category B from 29.10.1997 and to category A on 08.10.2000 , and prepare seniority keeping the workman Sri Rejendra Beldar above his juniors without giving any monetary benefits. The claim of the workman is allowed in part.

This is my Award.

R. K. SARAN, Presiding Officer

नई दिल्ली, 2 अप्रैल, 2014

का.आ. 1223.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार आई.बी.पी. कं. लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, नई दिल्ली के पंचाट (संदर्भ संख्या 92/1998) को प्रकाशित करती है, जो केन्द्रीय सरकार को 2-04-2014 को प्राप्त हुआ था ।

[सं. एल-30012/34/1997-आईआर (सी-I)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 2nd April, 2014

S.O. 1223.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 92/1998) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, New Delhi as shown in the Annexure in the Industrial Dispute between the management of M/s. I.B.P. Co. Ltd., and their workmen, which was received by the Central Government on 2/4/2014.

[No. L-30012/34/1997-IR(C-I)]

M. K. SINGH, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, ROOM NO. 33, BLOCK-A, GROUND FLOOR, KARKARDOOMA COURT COMPLEX, KARKARDOOMA, DELHI-110 032

Present : Shri Harbansh Kumar Saxena

ID No. 92/1998

Sh. Chatter Pal

Versus

I.B.P. Company Limited.

AWARD

The Central Government in the Ministry of Labour vide notification No L-30012/34/97-IR (C-I) dated 2/3/98 referred the following industrial dispute to this tribunal for the adjudication:-

"Whether the termination of the management of I.B.P. Co. Ltd. in terminating the services of Sh. Chatter Pal, Sweeper, w.e.f. 7.12.95 is justified, legal and fair?" If not, to what relief the workman entitled?

On 02.04.98 reference was received in this tribunal. Which was register as I.D. No. 92/98 and claimant was called upon to file claim statement with in fifteen days from date of service of notice. Which was required to be accompanied with relevant documents and list of witnesses.

After service of notice workman/claimant filed claim statement. Wherein he stated as follows:-

1. That the workman was employed by the management as Sweeper on 9.5.87 on temporary basis and last drawn salary is Rs. 1983 Rs. One thousand nine hundred eighty three only) excluding the other benefits applicable to the workman as per law and practice of the management.

2. That the workman had been discharging his duty with full sincerity and efficiency and had not been charge sheeted , issued any show cause notice by the management on its subordinate during course of this employment.

3. That even after the repeated requests and demands from the workman, the management had not confirmed the service of the workman after completion of statutory period as permanent employee whereupon the workman sent written request letters through registered acknowledgement bearing receipt No. 1795 of 10.9.1990, 0522 and 891, to various authority of the management with regard to the confirmation of his service but in vain.

4. That the management had illegally and arbitrarily terminated the workman from his service on 7.12.1995 and has also withheld the salary from, Oct. 1995 to 7th 1995 .

5. That the workman had constrained to sent a legal/ demand notice bearing reference No.I-188/95 on 13.12.1995 by registered acknowledgment and UPC which was duly received and false and fabricated reply dated January, 10,1996 was sent by the management. Whereupon the workman had filed his claim before 15, Raj Pur Road, Delhi the case was filed before' Sh. B.S. Aneja, Asst. Labour Commissioner, Karam Pura, New Delhi in the month of Jan., and the same was withdrawn on 9.5.1996 to file in the proper court. Hence his claim.

6. That the workman who held worked with the management about 10 years has now became unemployed and totally dependent on his relative and friends for his survival and survival of his family. This unfortunate has not fallen on the family of the workman due to the natural calamity but, it has fallen by the negligence, arbitrary, irresponsible, malafide and illegal act of the authority of the management which is within the perview of the unfair labour practices which is punishable under section 45 of Industrial dispute Act, 1947.

It is therefore, most respectfully prayed that this Hon'ble Court/tribunal may be pleased to pass an award directing the opposite party/management to reinstate the workman on his post with confirmation and full back wages, other allowance etc with continuity of his service from the date of illegal termination with cost or pass any other suitable order against the management and in favour of the workman.

Against claim statement management filed following written statement:-

PRELIMINARY SUBMISSION

That there has never been any employer-employee relationship between the Management and the Application. The services of the Applicant were engaged by Mr. Hari Singh, whose services were engaged by the Company on contract from time to time to .perform sweeping and cleaning jobs at the residence/transit flat of the Company. Accordingly, the Applicant was never employed by the company. Hence no employer-employee relationship exists and as such, the present dispute is not maintainable.

Without prejudice to the above, the management's parawise reply to statement of claim is as under:

l. Contents of paragraph one of the statement of claim are false and hence specifically denied. The applicant was not employed by the management on any date much less on 9th May, 1987 as alleged. His services were engaged by Mr. Hari Singh, Contractor who was responsible for sweeping and cleaning at the residence of the transit flat of the company. It is, however, admitted that Mr. Hari Singh used to pay the Applicant an amount of Rs. 1,983 per month during the currency of the contract, which was more than the minimum wage stipulated by the Delhi Government for such services.

2. Contents of paragraph two of the statement of Claim are misconceived and hence specifically denied. As there was no employer-employee relationship between the management and the Applicant, there was no question of issuing any charge-sheet or show-cause Notice or for the management to take any action in the matter.

3. Contents of paragraph three of the statement of Claim are misconceived and hence specifically denied. It is reiterated that as there was no employer-employee relationship, the question of confirming the services of the Applicant in the employment of the Company could not and did not arise. It is reiterated that his services were Engaged by Mr. Hari Singh, Contractor, who was responsible for the sweeping and cleaning at the residence of the transit flat of the company. Hence the averments and assertions as set out in the corresponding paragraph are vehemently denied.

4. Contents of paragraph four of the statement of Claim are misconceived and hence specifically denied. As there was no employer -employee relationship, the question of the services of the Application could not and did not arise. His dispute, if any, is only maintainable against Mr. Hari Singh, who had employed him and paid him his wage from time to time. It may be mentioned that the procedure for employing a person in the service of the company is well settled and it is only after complying with the same that it is possible to recruit a person. In the absence of any relationship with the Company, the claim is not maintainable.

5. Contents of paragraph five of the statement of claim are admitted that the Applicant got issued a legal/ demand notice dated 13th December, 1995. On receipt of the same, the management duly replied to the same vide their letter dated 10th January, 1996. Subsequently, the Applicant raised an industrial dispute before the Assistant Labour Commissioner, Karampura, New Delhi who was pleased to dismiss the same for the reason that he did not have the jurisdiction in the matter.

6. Contents of paragraph Six of the statement of Claim are misconceived and hence specifically denied. It is reiterated that as there was no employer-employee

relationship between the Company and the Applicant, there was no question that the company could terminate the services of the Applicant. What has been set out in the corresponding paragraph six of the Statement of Claim is specifically denied for want of knowledge. The Applicant is put to strict proof of the same.

7. It is, therefore, most respectfully submitted that this Hon'ble Court/Tribunal be pleased to pass an Award holding therein that the alleged claim filed by the applicant is wholly misconceived and untenable.

Particularly as there was no employer-employee relationship ever by and between the parties. Furthermore, the nature of duties of a sweeper are not of a full time, particularly in the case of the Transit flat, it is of a limited duration.

Hence, in view of the aforesaid facts and circumstances no relief can be claimed by the Applicant against the management. In the event he has any grievance, it could be directed only against his employer Mr. Hari Singh who unfortunately has not been made a party in this proceeding. Accordingly, an Award be passed and the Reference answered.

Workman filed rejoinder wherein he stated as follows:-

Preliminary Objections:-

l. That the contents of the para and sub para begins before para No. 1 of preliminary submission of reply of the management are not admitted to be correct and hence are denied vehemently. It is emphatically denied that the applicant /workman has no employer and employee relation with the management or he has been employed Mr. Hari Singh the contractor of the company as alleged but not admitted. As per the knowledge based on the information verbally collected by the workman from the official staff of the management Mr. Hari Singh appointed as contractor by the management in the year 1990-91, whereas the workman was employed by the management as sweeper on 9.5.87 and has been drawing salary at about Rs. 1983/- excluding the other benefits, no question of employment of the workman within Hari Singh contractor as alleged has been arisen and he contents of the claim are reinstated as true and correct and the management be put to give strict proof thereof.

l. That the contents of para No. 1 of the reply is wrong and denied vehemently as the applicant was employed by the management on 9.5.1987 . It is emphatically denied that the workman was working with Hari Singh the contractor as alleged but not admitted. The reply of the above para may be read as the part of this para and is not be repeated here for the sake of brevity. The management deliberately failed to mention the dated of employment of the workman to mislead the court. The only the rat of salary is admitted.

2. That the contents of para 2 are emphatically denied as the workman has the employee and employer relationship with the management and the contents of para 2 of the statement of claim be re-instated re-affirmed as correct. And the management be put to give strict proof thereof. The workman has already filed sufficient documentary proofs.

3.That the contents of para 3 of the reply are wrong and denied emphatically as the workman was employee of the management from the date of appointment and he never worked under Hari Singh and the contents of para 3 of the claim is re-instated and re-affirmed as true and correct.

4.That the contents of para 4 of the reply are emphatically denied as wrong and the reply of the above paras may be read as a part of this para and he contents of para 4 of statement of claim re-instated and re- affirmed as correct.

5.That the contents of para 5 is admitted but it is emphatically denied that the reply of the management is of the demand notice of the workman is based on true facts of the case. Hence the reply of the notice are false and denied.

6.That the contents of para 6 of the reply are wrong and denied in the light of the reply of the above para and the contents of the para 6 of the statement of claim re-instated and re-affirmed as trued & correct.

Prayer clause of the reply are wrong and denied emphatically and the prayer clause of the statement of claim may be re-instated and re-affirmed as true and correct.

My Ld. predecessors has not framed any issue but proceed to adjudicate the present reference on the basis of schedule wherein questions of determination were as follows:-

> "Whether the termination of the management of I.B.P. Co. Ltd. in terminating the services of Sh. Chatter Pal, sweeper, w.e.f 7.12.95 is justified, legal and fair?" If not, to what relief the workman entitled?

Workman in support of his case filled affidavit in his evidence wherein he stated as follows:-

l.That I the above named deponent swear this affidavit in name of the God and I say only truth and nothing but the truth.

2.That I was employed by the management as Sweeper on 09.5.1987 on temporary basis and my last drawn salary is Rs. 1983/- (Rupees One Thousand Nine Hundred Eighty Three only) excluding the other benefits applicable to my post as per law and practice of the management.

3.That I had been discharging my duty with full sincerity and efficiency and had not been chargesheeted, issued any show cause notice by the management or its subordinate during the course of my employment.

4.That even after the repeated requests and demands from my side the management had not confirmed my service after completion of statutory period as permanent

employee whereon. I had sent written request letters through registered acknowledgement bearing receipt No. 1795 of 10.9.1990, to the personal manager of the opposite party with regard to the confirmation of my service but in vain. The true photocopy of the representation dated 10.9.1990 is exhibited as W/W/1/1 and postal receipt of registry to personal Manager with acknowledgement are exhibited as W/W/1/2 and W/W/l/3 . I had also sent a letter dated 1st November, 1989 to the Regional Manager of opposite party through registered post on 03.11.1989. The true photocopy of the letter is exhibited as W/W/1/4 and registry postal receipt as W /W /1/6.

5. That I had sent a representation dated 14.6.1994 to the General Manager of Opposite party by hand and the same was also sent through registered acknowledgement on dated : 2.11.1994, to the officer concern of the opposite party but no action was taken by the opposite party. The true copy of the letter dated 14.6.1994 is exhibited as W/W/ 1/7, and the postal receipt as W/W/1/8 and acknowledgment as W/W/1/9.

6. That when the opposite party failed to consider my several requests I was constrained to sent a representation dated: 31.10.1995 to General Secretary of S.C.S.T. I.B.P. Company Ltd. by hand which was duly served. The same is exhibited as W/W/1/10 , and also a representation to president of the same organization by post on dated: 19.12.1995. The representation is exhibited as W/W/1/12 and acknowledgment as W/W/l/13.

7. That on receipt of my representation the Under Secretary Mr. V. K. Gauba , Cabinet Secretariat, Rashtrapati Bhawan, New Delhi had written two letters to Chairman and General Manager of the opposite party on dated: 18.10.1995 and 17.11.1995 respectively. The true copy of the letters are exhibited as W /W /1/14 and W /W /1/15. But since the opposite party failed to consider my request letter from Rashtrapati Bhawan , hence I had sent a legal/demand notice through my representative on dated 13.12.1995. The true Carbon copy of demand notice is exhibited as W/W/1/16, and postal receipt as W/W/l/17.

8. That the opposite party's reply to the demand notice dated 10.01.1996 is false and vimsical. The said reply is marked as x. The opposite party and alleged in its reply that I was employed by Mr. Hari Singh , the contractor. It is pertinent to mention here that Hari Singh was employed by the opposite party as workman in year 1991 whereas you have been doing my job with the management since 09.5.1987. The photocopy of the payment register substantiate my averment which are marked A-l & A-6 and I have worked till the date of illegal and arbitrary terminated. Apart from the other documents already on record the photocopy of salary registers are enclosed here as mark A-7 to A-9.

9. That I further state that Smt. Punam Chopra who was guest house Incharge and permanently working in administration department of the opposite party had also allowed allowance for my overtime period and signed on the payment recommendation receipt on 12.9.1988 and 10.5.1988 the same are mark as A-10 and A-11.

That the opposite party had even sanctioned money for purchasing an Umbrella and also a gas connection on my request. The true copy of sanction letter of Umbrella is exhibited as W/W/1/18, and true carbon copy of Gas connection is exhibited as W /W /1/19.

10. That I was victimized by the opposite party by confirming some of the employees namely Laxmi Prasad Notiyal, Vijay Bahadur Yadav , Kulvir Bahadur , Narender Singh Negi , Kishore Prasad Notiyal, Ashok Kumar, Vijay who were working with me while my service was terminated without a show cause notice by the management /opposite party.

11. That the management has illegally and arbitrarily terminated my service on 7.12.1995, and had also withheld the salary from October, 1995 to 7th December, 1995.

12.That I had filed a claim before Conciliation officer where the opposite party failed to settle the matter amicably hence he said officer requested the appropriate authority for reference of the matter before this Hon'ble Tribunal for adjudication.

That my claim and relief is correct. I am not deposing falsely.

Management in support of his case filled affidavit in his evidence. Wherein She stated as follows:-

1. I am the Senior Manager (P&IR) with the Management Company. I am conversant with the facts and circumstances of the case as also I have full knowledge of the case and am therefore competent to affirm and swear this Affidavit.

2. I say that there has never been any employer-employee relationship between the Management and the claimant. The services of the claimant were engaged by Mr. Hari Singh, Contractor, whose services were engaged by the Company on Contract from time to time to perform sweeping and cleaning jobs at the Transit flat/residence of the Company. Accordingly, the Claimant was never employed by the Company and there was no employer-employee relationship whatsoever by and between the parties.

3. I state that the Contractor Mr. Hari Singh used to pay the claimant an amount of Rs. 1983/- per month during the currency of the contract which was more than the minimum wage stipulated by the Delhi Government for such services. I the absence of any employer-employee relationship the question of either employing the services of the Claimant and/or terminate his services cannot and does not arise. His dispute, if any is only maintainable against Mr. Hari Singh, who had employed him and had

paid him his wages from time to time. I state that the procedure for employing a person in the service of the company is well settled and it is only after complying with the same that it is possible to recruit a person in our services.

4. I state that in the present facts and circumstances the services of Mr. Chattar Pal were never ever engaged and/or employed by the management of M/s IBP Company Ltd. The mere production of some papers to show alleged employment relationship are wholly inadequate under the law. Furthermore, being a Public Sector undertaking it is impossible for the Company to indulge in any unfair labour practice and/or to violate labour laws in any manner possible. Hence, it is not possible for the Company to employ the claimant Mr. Chattar Pal and thereafter state on oath before this Hon'ble Court that there has not been any employer employee relationship.

5. I state that a person who is employed in the services of our Company necessary is issued the following statutory documents:-

(i) Appointment Letter

(ii) Company Identity Card

(iii) Contribution to Employees Provident Fund

(iv) Contribution to Employee's State Insurance Scheme

(v) Payment of Wages as per salary register

(vi) Eligibility for payment of bonus.

The aforesaid are some basic Statutory requirements whereby an employer employee relationship is established by an individual with our Company viz IBP Co. Ltd. In the absence of the aforesaid documents the assertion of the claimant that he is an employee of the company is of no avail.

6. I state that a Claimant had got issued a demand notice dated December 13,1995. On receipt of the same, the management duly replied to the same vide their letter dated January 10,1996.

Subsequently, the Claimant raised an industrial dispute before the Assistant Labour Commissioner, Karampura, New Delhi who was pleased to dismiss the same for the reason that he did not have the jurisdiction to entertain the same.

7. I state that the workman had filed an Application dated January 4, 2002 demanding production of documents by the Management. In this regard I have already stated that as regards Exhibit-WW1/l it is a fabrication of an alleged representation dated September 10, 1990. He said letter was never ever received by the Management. It appears to be manufactured by the Claimant to make a plausible case in his favour before this Hon'ble Court. In this regard, it is necessary to place on record that there was no cause of action for the Claimant to have sent the said letter for the reason that there was no vacancy available for the post of Safaikaramchari. The registry receipt and A.D. card in support of the same that have been marked as Exhibits WW-l/2 and WW-l/3 have been manipulated, since no such letter was ever received by the management. In fact, at the relevant time there was no designation of Personnel Manager, IBP Company Ltd. at the Regional Office situated at 18-20 Kasturba Gandhi Marg, New Delhi. The alleged Exhibits WW1/l -WW-l/2 and WW-l/3 are false, fabricated and specifically repudiated.

8. I state that Exhibit WW-l/4 is the letter dated November 1, 1989 allegedly issued to the Regional Manager by the claimant. This letter too was not received by the Management and is a fabrication. A perusal of the contents of the letter would show that the claimant is trying to make out a case that he was a full time sweeper, employed by the company whereas he was not employed by the Company. His services were availed off by the Caretaker who was responsible for the maintenance and upkeep of the Transit Flat of the Company. Initially, Mr Surender Singh Negi was the Caretaker and thereafter Mr. Kunwar Singh was so responsible.

9. I state that the procedure for recruitment in the services of the company is well laid down; all appointments in the services of the Company are based on a valid letter of appointment, most particularly as the company is a Government of India Enterprise and that strict norms and procedures are adhered to while employing any person in the services of the company.

10. I state that the alleged letter and November 1, 1989, was not received by the company. It appears to be a manipulation on the part of the Claimant to support his fabrication. He has therefore manipulated the alleged Registry Receipt and A.D Card. The A.D. Card has an alleged signature on behalf of the Company which is clearly unauthorized. At the relevant time in November 1989 Mr. K.L. Ghildiyal was posted in the Dispatch section and that his signature/initial do not tally with those on the said document.

11. I state that Exhibit WW-l/7 is another fabricated document. It was not received by the Company. It is noteworthy that the management has a strong Trade Union in existence in the Company and that all workmen are members of the said Trade Union. Assuming, if the Claimant was a workman of the Company, he would have automatically been a member of the said Trade Union. The said Trade Union fully safeguards the interests of all workers employed in the company. In the present facts and circumstances, had the workman concerned ever been an employee of the company, he would necessarily have been a member of the Trade Union, who would then espouse his cause both before the Management as also before the statutory authorities under the Industrial Disputes Act, 1947 including this Hon'ble Industrial Tribunal.

12. I that the alleged Registry Receipt and AD card Exhibits WW-1/8 and WW-1/9 respectively are fabrications and manipulations on the part of the Claimant, so as to make out a plausible case before this Hon'ble Tribunal in his favour. Further, Exhibit WW-1/10 is another fabrication. It is specifically repudiated that the Company received the said letter dated October 31,1995. The said letter appears to have been manipulated with ulterior motives. I state that no such letter was received by the management. Further, the alleged rubber stamp on the letter appears to be a manipulation most particularly as the claimant had access to the establishment andthat Company's such rubber stamp is not kept under lock and key and/or retained by any responsible Officer of the Company. In such circumstances, it is always possible that he may have so manipulated the alleged receipt of the said letter. On a careful perusal of the record of the company, no such letter dated October 31,1995 was received from the claimant as alleged.

13. I state that Exhibit WW-1/11 is a letter addressed to the All India SC/ST President I.B.P. Company Limited Gillanders House, 8, Netaji Subhash Road, Calcutta . This letter has not been endorsed or addressed to the company but to the president of the All India SC/St Association. Further, the Company has not received any enquiry whatsoever from the said Association. This letter too appears to have been deliberately drafted and filed before the Hon'ble Court to facilitate the workman to make out a plausible case in his favour. The existence of such letter with the management is specifically denied and repudiated.

14. I state the Exhibit WW-l/15 is the letter dated November 17, 1995 issued by Mr. V.K. Gauba, Under Secretary, Cabinet Secretariat, Rashtrapati Bhavan, New Delhi. The letter is addressed to Mr. S.K. Khosla, General Manager, IBP Company Limited. This letter status that Mr. V.K. Gauba had a telephonic conversation about regularization of the services of Mr. Chattar Pal, Sweeper, in IBP Co. Ltd. He has further stated that "from the enclosed documents, it is self evident that Mr. Chattar Pal was and is an employee of your company and, therefore, his services are required to be regularized since the services of his colleagues appointed even much later have been made permanent."

14. I state that the claimant has dishonestly, deliberately and mischievously not filed a copy of the said appointment letter dated October 7, 1988 . The Management has filed the same before this Hon'ble Industrial Tribunal which is Exhibit MW1/1. The letter dated October 7,1988 when received by the company was found to be a blatant forgery and a criminal act of misconduct on the part of Mr. Chattar Pal. The company then confronted the claimant with a copy of the said letter and he admitted his guilt. The criminal conduct of the Claimant is prima facie available, on the record of this Hon'ble Tribunal. To facilitate this Hon'ble Court eight other similar documents are being filed being Exhibits MW1/2, MW1/3, MW 1/4, MW 1/5, MW 1/6, MW 1/7, MW1/8 and MW 1/9 whereby this Hon'ble Court would clearly appreciate that the claimant is indulging in criminal misconduct.

16. I state that Exhibit WW-l/18 is allegedly written by or on behalf of the Claimant wherein he has requested being provided with an umbrella. This documents clearly states that the said Rs. 130/- in cash be paid to Mr. Kunwar Singh who was the then Caretaker.

17. I further state that Exhibit WW-1/19 is a letter issued by the Company. It is addressed to M/s. Priya Services wherein it is conveyed that Mr. Chattar Pal has been allotted a gas connection against company's quota. It also mentions the address of Mr. Chattar Pal but is does not state that he is an employee of the company. I state that such letters are issued in routine by the company to friends and well-wishers of the Company and is not a documents that would establish an employer-employee relationship in the eyes of law.

18. I state that the documents marked as A-1 to A-11 submitted by the claimant are not records of the company. However, the said documents reflect the payment made by the Contractor to the Claimant who rendered services to the contractor.

19. I state that Mr. Chattar Pal the claimant in the present proceedings was not an employee of the Company rather was an employee of the Contractor who provided the company services at the Transit flats/residence of the Company. He is not eligible and for entitled to any relief whatsoever against our company viz IBP Company Limited.

He was Partly cross-examined by Smt. Anita Saroha, A/R for workman on 18.10.06.

His cross-examination is as follows:-

I have filed my affidavit alongwith the copies of documents which are annexure to my affidavit. The fact mentioned in my affidavit are true and correct as per record pertaining to this case. Nothing has been concealed therein. I have personal knowledge of this case and as such I am conversant with the facts of this case. My affidavit Ex. WW1/ A and copies of documents Ext. MW1/1 to MW1/9 be read in my evidence as part of my statement on behalf of the management.

So far as I recollect the workman services were engaged as sweeper through contractor Hari Singh in the year 1987. The claimant Chattar Pal worked as sweeper in the Guest House of the respondent company since 1987 till 1995 continuously. Vol. that the workman Chattar Pal was not employee of the respondent company but he was engaged to work as sweeper through contractor Hari Singh and he has been working on contract basis as sweeper during the year 1987 till 1995 continuously. Mr. Hari Singh is looking after the guesthouse of the respondent company

on contract basis. He is not regular employee of the respondent company. It is wrong to suggest that he is regular employee of the respondent company. I do not actually remember since when Mr. Hari Singh has been looking after the guest houses on contractual basis. I have not brought the relevant file pertaining to Hari Singh. Vol. that he stated working as contractor for the management during the year 1990 onward. Earlier Mr. Chattar Pal services were engaged as contractor through Mr. Surinder Singh Negi witness states so after going through her personal file. It is incorrect to suggest that the management has stated in its reply/written statement that Chattar Pal's services were engaged on contractual basis through Hari Singh only, since 1987.

The wages/salary of the workman Chattar Pal was being paid by the contractor previously his wages were paid by Surinder Singh Negi during the period when he acted as contractor and thereafter his wages were paid by Hari Singh when contract was given to him to look after the guest house. Record to the effect that wages were paid through the said contractor is available with the management and can be produced as and when required. The respondent has not placed on record any document to show that contractor look after the affairs of guest houses of respondent company was given to the said persons Mr. Negi and Hari Singh at the relevant record. The record can be produced as and when directed. It is incorrect to suggest that Surinder Singh Negi was the Supervisor of the respondent company. It is incorrect to suggest that Shri Surinder Singh is still employed with respondent company and functioning as supervisor. Vol. He is working as Drive way sales man at company's Petrol Pump. It is incorrect to suggest that wags were paid to the workman Chattar Pal by the company. Vol. the same were paid by the contractor. It is correct that Chattar Pal was allotted/given a Gas Connection by the respondent company. It is also correct that some small concessions in the form of providing of Umbrella was given to the workman on humanitarian grounds. It is incorrect to suggest that notice dated 13.12.95 was sent by the workman Chattar Pal through his counsel and was duly received by respondent company. It is incorrect that the reply to notice is dated 10.1.96 to the notice Ex. WW1/16. It is incorrect to suggest that some of the persons namely Laxmi Prasad Notiyal, Vijay Bahadur Yadav who were engaged as sweeper or to perform other petty job like Chattar Pal were regularized in the job. It is incorrect to suggest that S/Shri Kulbir Bahadur, Narinder Singh Negi and Kishori Prasad who were engaged as sweeper have been regularized in service. (Court Q: all the aforesaid persons have been regularized in the job of Helper and are working at different places. Vol. they were never employed as sweeper. It is wrong to suggest that initially they were engaged in the quest house to perform the duties and later on their services were regularized. It is correct that Chattar Pal representations were not received. The letter Ex. WW1/15 was received by the respondent company. The reply is not available on record. The same will be traced and placed on record if traced and required. No order terminating the services of the workman was required by the respondent company as he was not employee of the respondent company. I do not know when the services of the workman were dispensed with by the contractor. Ex. Annexure A-1 to A-8 are not the documents issue by an on behalf of the respondent company. The said are photo copies of the documents received by the contract.

Further cross-examination deferred.

He was further cross-examined by Smt. Anita Saroha, A/R for the workman.

His further cross-examination is as follows:-

No Identity Card is issued to Chattar Pal. Vol. that Identity Card is issued to permanent employees only as per rules. Ex. WW1/1 was issued by the respondent. Vol. this I.Card was issued to ascertain the identity of the claimant for the safety and security of the senior officials of the company. The gas connection has been recommended to be issued to Chattar Pal as a matter of welfare measure Vol. It is not issued on account of his being employees. Wages were paid by attendance of Chhatar Pal cannot be produced as the same was not maintained by the company. The record pertaining to the period w.e.f 9.5.87 till 7.12.95 is not available with the respondent at present as the same has been weeded as being old record for more than five to seven years. It is wrong to suggest that the respondent management used to supply shoes, umbrella and uniform to the claimant Vol. that the said articles were supplied to the claimant by the contract. There is no record in existence available with the contractor or in existence or providing the said articles to the claimant as the said articles were not supplied. The question of maintaining such record does not arise. Services of claimant were dispensed /terminated as he forged letter purportedly issued by S.Monga, Regional P& A Manager Ex. MW1/1.

Court Q. Did you issued any charge sheet to him.

Ans. Charge Sheet was not issued to claimant nor any enquiry was conducted. Vol. it was not required as the claimant was not employee of the respondent.

It is wrong to suggest that S/Shri Raja Ram Brij Mohan Khushi Ram, Shamim were employed with respondent alongwith the claimant. It is wrong to suggest that all the above said employees except Chhatar Pal have been regularized by the respondent. It is correct that Kul Bahadur, Vijay Kumar, Ashok Kumar, Kishori Pd. Notyal, Lakshmi Pd. Notyal, Kulbir Singh, Narender Singh have been regularized. Because they were helpers in the catering department and their nature of job was different from the claimant. Here was not permanent vacancy of sweepers

with the respondent. Services of persons on sweeping were obtained through contractors. It is correct that Prem Singh was initially appointed as Sweeper has been regularized in the year 1987. The Company is not supposed to clear the dues of the claimant as he was not its employee. It is the responsibility of the contractor. As per information of the respondents all the dues of the claimant were cleared/paid by the contractor. It is incorrect to suggest that I am deposing falsely or that the claimant is not entitled to the relief claimed.

Written submission on behalf of the management. Wherein it stated as follows:-

1.That the present Industrial Dispute is pending adjudication proceedings before this Hon'ble Tribunal am dos at the stage of passing of final Award in the matter.

2.That the present Industrial Dispute was referred by the Central Government to this Hon'ble Tribunal vide Reference Order bearing No. L-30012/34/97(C-I) dated March 24, 1998. The Terms of Reference of the said Reference Order are as under:

"Whether the termination of the management of I.B.P. co. Ltd. in terminating the services of She Chatter pal, sweeper, w.e.f 7.12.95 is justified, legal and fair?" If not, to what relief the workman entitled?

Subsequently to the Reference, the parties to the alleged industrial dispute filed their respective pleadings before this Hon'ble Tribunal. The case of the Claimant is that he was employed by the answering Management as Sweeper on May 9, 1987, on temporary basis and his last drawn salary was Rs. 1, 983/- He further contended that despite various requests from his end, the Management did not confirm him in their services. He alleges that the Management illegally and arbitrarily terminated his services with effect from December 7, 1995 and also withheld his salary for two months viz. October 1995 to December 7, 1995. The relief prayed for is reinstatement in service with continuity and payment of full back-wages and other allowances.

The Management, vide their Written Statement, specifically repudiated that there ever exited any employer-employee relationship between the parties and that the claimant was employed by one Mr. Hari Singh, Contractor, engaged to independently maintain the operations of the Transit Guest house. Hence was a contractor with the management and the Claimant was actually an employee of the said Contractor and not in the employment of the answering Management. Further, the Management also contended that in the event the Claimant had any grievance, the same could be directed only against his employer i.e. Mr. Hari Singh, Contractor, who, unfortunately, was not made a party by the Claimant in the present adjudication proceedings. Accordingly, an Award be passed in favour of the Management and that the Reference by answered.

3. That based upon the pleadings of the parties, this Hon'ble Tribunal was pleased to frame Issues vide order dated August 24, 1993, the same are as below:

(1) Whether the Claimant is a workman of the Management viz. M/s. IBP Company Ltd.

(2) As per terms of reference.

4. That based upon the said Issues, the Claimant produced himself as the sole witness in order to substantiate his claim and filed his evidence by way of Affidavit dated February 23, 1999. His cross-examination was conducted on January 4, 2002. The claimant, in support of his alleged employment, has relied upon an Identity Card issued to him by the answering Management in support of his contention that he was an employee of the Management Company. He had also filed an alleged Appointment Letter dated November 7, 1988, issued by the management Company but during his cross-examination, he denied the said documents, for the reason that it was a forged document as has been proved in the evidence of Ms. Poonam Chopra on behalf of the management. As regards the other document filed by the Claimant, they are merely photocopies and do not support the case of the claimant that he was in the employment of the answering management.

The Management produced Ms. Poonam Chopra, Senior Manager (P& IR), as their witness on behalf of the management . She filed her evidence by way of Affidavit and has specifically denied any employer-employee relationship between the Claimant and the Management. She stated that the Management is a Public Sector 'Undertaking (a wholly Central Government owned company) who could not indulge in any unfair labour practice and/or violate any labour laws and also could not file a false affidavit on oath before this Hon'ble Tribunal. The said witness explained that for a person to be employed in their company, it is mandatory for the company - Management to issue a standardized Appointment Letter, besides to contribute to statutory Insurance Scheme; to comply with provisions relating to the payment of Wages Act-Salary Register and Eligibility for Payment of Bonus. The witness, in her cross-examination, also denied the various documents submitted by the claimant and specifically stated that the same were forged and fabricated. They were mere photocopies.

During her cross-examination recorded on January 18, 2006, the witness clearly denied any employer-employee relationship between the claimant and the Management. She stated that he had been employed by Mr. Hari Singh , Contractor. She further clarified that prior to the claimant's services being engaged through the said Hari Singh, contractor, he had been in the employment of Mr. Surender Singh Negi who was also a contractor with the answering management. The witness, during the cross-examination conducted on October 18, 2006, clarified that the Identity

Card issued to the claimant was to ascertain his identity and was not a Company Identity Card and further stated that the same had been issued for the safety and security of the senior officials of the Company visiting the Transit Guest House by providing clarity of identity to the claimant.

5. That the claimant, during his cross-examination, failed to produce any cogent evidence with regard to his alleged employment with the management. In fact, the claimant has only relied upon the alleged Identity Card issued to him bearing signatures of a representative of the Management. It is pertinent to state that merely issuance of an Identity Card is not sufficient or conclusive to establish the factum of proving employment as has been held by the Hon'ble High Court of Punjab & Haryana in the case of Rampat Vs. Presiding officer, Industrial Tribunal-Cum-Labour Court, Panipat & Another reported as 2013LLR, Page 323. The Hon'ble High Court has held that only an Identity Card is neither sufficient nor conclusive evidence to determine the status of employer- employee relationship in the absence of any proof of salary or wages having been paid to the workman to prove employer-employee relationship.

Further ,the Hon'ble Delhi High Court in the case of Anand Prakash Vs. Godrej Sara Lee Ltd. reported as 2009 LLR 564 has held that the labour court was right in rejecting a dispute of a Petitioner alleging wrongful termination in case he has failed to support his claim by producing any documentary evidence including the Appointment letter whereas the Management has categorically rebutted contention of the workman pertaining to his employment with the management and also producing the record showing that the workman was never employed by the management.

6. That the claimant has filed to substantiate the assertions and contentions raised by him vide his Statement of Claim. In fact, it is the well settled principle of law and that the burden of proof to prove a fact lies upon the person alleging the said fact. The Hon'ble Allahabad High Court, in the case of Vinod Kumar **II** Vs. Presiding Officer, Labour Court, Agra & Another reported as 2005 LLR 1229 has held that while challenging the termination of services, it is for the workman to prove, in the first instance, his employment, and thereafter, wrongful termination. On his failure to do so, he will not be entitled to any relief in a dispute before the Labour Court. The Hon'ble Court has further held that the burden of proof lies heavily on the workman who has sought the reference of his dispute for adjudication before the Labour Court as the burden of proof lies initially on the party who raises the dispute, and at the instance of whom, the industrial dispute has been referred for adjudication.

7. That even in the present matter the Claimant has failed to produce any documentary evidence in the form of an Appointment Letter and/or salary slips in support of his alleged claim of employment with the management. The salary slips are those of the Contractor and not those of the management Company. In fact, all employees of the Management Company are paid salary by direct remittance to the respective Bank Account of the employee concerned.

8. That the Hon'ble Supreme Court of India in the case of Steel Authority of India Ltd. & Others Vs. National Union Water Front Workers & others reported as 2001 Lab. I.C. 3656 has held that it cannot be said that by virtue of engagement of Contract Labour by the contractor in any work of or in connection with the work of an Establishment, the relationship of master and servant is created between the Principal Employer and the contract Labour. The Hon'ble Supreme Court has further held that even a combined reading of the definition of the term 'Contract Labour', 'Establishment 'and in an industry and the owner of the industry is created irrespective of the fact as to who has brought about such a relationship. The word 'Workman' is defined in wide terms and is a generic term of which Contract Labour is a species.

The Hon'ble Supreme has further opined that it is true that a combined reading of the terms 'Establishment' and 'Workman' shows that a workman engaged in an Establishment would have direct relationship with the Principal Employer as a servant or master, but what is true of a workman could not be correct of Contract Labour. When the provisions of the Act neither contemplate creation of direct relationship of master and servant between the Principal Employer and the Contract Labour nor can such relationship be implied from the provisions of the CLRA Act.

9. That in view of the specific pleadings of the Management as well as the failure on the part of the claimant to prove his alleged claims, as also based upon the legal precedents cited hereinabove, the Claimant is neither entitled nor eligible to any relief as sought by him in his Statement of Claim.

It is, therefore, prayed before this Hon'ble Tribunal that an Award may be passed in favour of the Management and against the claimant holding that the claim as stated vide the statement of claim is not maintainable as there exists no employer-employee relationship between the claimant and the management.

Ld. A/R for the workman filed written arguments. Wherein she mentioned as follows:-

l. That the workman Sh. Chattar Pal the workman concerned has challenged the validity of termination against the management of M/s I.B.P. Co. Ltd and has raised the dispute against the management, the said matter was referred by the appropriate Government (Central) to this Hon'ble Court for adjudication. The terms of reference are as under:

"Whereas the action of the management of I.B.P. Co. Ltd. in terminating the services of Sh. Chatter pal, sweeper, w.e.f 7.12.95 is justified, legal and fair?" If not, to what relief the workman entitled?

2.That the workman has filed his claim statement before the Hon'ble court and after received the notice the management appeared and filed the written statement. That on the basis of pleading the Hon'ble Court has framed the issues on the basis of pleadings.

l.That after framing of the issues by the Hon'ble Court the matter was fixed for workman evidence by way of affidavit. The workman filed the evidence by way of Affidavit along with relevant documents which are on record as Ex WW1/1 to Ex. WW 1/19 and attendance sheet A-1 to A-1 to A-9.

2.That the workman has lead his evidence by way of Affidavit which is on record as Ex WW / A and the workman relied upon the documents which are Ex WW1/1 to Ex WW1/19 . The workman stated on the workman was appointed by the management as an Sweeper w.e.f 09.05.1987 and last salary drawn @ Rs. 1983/- per month. The work performance of the workman was quite satisfactory and unblemished service record and has never given any cause of complaint to the management rather the management was satisfied with his work and conduct. The relationship between the workman and the management was exists as admitted by the workman during the course of examination that the workman was employee of the management since 1987 as per document EX WW 1/ 14 (WW1/4) . The management witness Mrs. Poonam Chopra admitted in cross examination. The claimant Chattar Pal worked as Sweeper in the Guest House of the respondent company since 1987 to till 1995 continuously.

3.During the course of cross examination of the workman admitted that the workman was join the management- since Sh. Hari Singh was not the contractor of the management. No such cogent evidence and or document were ever place on record by the management. Even other wise the management witness admitted in cross examination as " I do not -actuallv remember since when Hari Singh has been looking after the quest house on contractual basis" When Mrs.Poonam Chopra being as Senior Manager Marketing does not about the employees working with the management. It is admitted by the management witness that Sh. Chattar Pal was an employee of the management but I donot reminder whether Sh. Hari Singh was an employee of the management or not. It is also admitted by the management witness as " It is correct that some concessions in the form of proving of umbrella was given to the workman including the uniform and other basic amenities. It means that the management providing the legal facilities to the workman because if there was no relationship then why the management has providing the basic amenities as well as legal facilities to the workman. The relationship exists between the management and its employees.

4. It is submitted that on 07.12.1995 the management without any cause and reason refused to join the duties of the workman and there by his service was terminated by the management on the same day i.e. 07.12.1995. The workman also stated that the termination of the service of the workman is totally illegal, unjustified and in operative and such the same is void abinitio. At the time of the termination of the workman the management had not paid any terminal benefits to the workman. The management clearly violated the provision of section 25 F of the I D Act 1947.

5. That it is submitted that the management also adopted the unfair labour practice towards the workman and the main intention in the mind of the management to terminate the services of the workman in any circumstances. The management also become success and achieve the purpose to terminate the services of the workman on 07.12.1995 . The management without any cause or reasons illegally and unjustifiably terminated the services of the workman on 07.12.1995, at the time of illegal termination of the workman the management had not paid any terminal benefits to the workman nor the management complied with section 25F of the ID. Act. The law is very much clear on the point of non compliance of Section 25 F of the Industrial Dispute Act- 1947 as the judgment was passed by the Hon'ble Punjab and Haryana High Court that "Section 25 F termination of workman without notice and compensation the termination is in clear violation of mandatory provisions of Section 25F . Improvement Trust Amritsar Versus The presiding officer and another. 2006 [1] SCT Page 25 [PHHC].

6. The law is very much clear in this point, when the management alleges that the workman was never appointment by the management whereas the workman was appointed by the management as admitted by the management witness in cross examination as "The Claimant Chattar Pal worked as Sweeper in the Guest House of the respondent company since 1987 to till 1995 continuously" The management witness corroborated the statement of the workman. The management has not given any suggestion in this point as such the adverse inference goes against the management. It is well established that the workman was appointed by the management as sweeper. It is submitted that the management no point of time had sent any letter to the workman asking him to report for duty. It is imperative to follows the rules of principles of natural justice by giving opportunity and the principle of natural justice had to be complied with. In the instance case the management neither complied any provisions nor complied the natural justice. The law is also very much clear, when non payment of retrenchment compensation to a workman will render the termination illegal. [Suraj Pal

Singh Versus The President Officer Labour Court no. III 2002 LLR Page 975 Delhi High Court.

The law is also very much clear in this point whenever there is retrenchment even in cooperative Society the provisions of the Act will be applicable i.e. non payment of retrenchment compensation at the time of termination to even an employee of cooperative Society will render the termination illegal. [Executive Director, district Scheduled cast Service Cooperative Society Ltd. Guntur and Another 2002 LLR Page 1020 [Andhra Pradesh High Court].

The law is also very much clear when the retrenchment Compensation is not paid at the time of termination it will be rendered as illegal. [State of Maharastra through Executive Engineer Versus Sayyedial Gani Sayyed 2002 LLR Page 1155 Bombay High Court.

The law is also very much clear that non payment of retrenchment compensation at the time of termination of a workman who was completed 240 days services will amount to illegal termination [State of Madhya Pradesh and Others Versus Vinod Singh Rathure and others. 2002 LLR Page 1093 [M.P. High Court].

The law is also very much clear that Industrial dispute Act-1947 Section 25F-non compliance of it- by corporation in making payment of retrenchment compensation at the time of termination. of services- Learned single Judge has rightly held that summary dismissal of the workman was illegal. [Municipal Corporation of Delhi Versus Mahavir 2002 LLR Page 1160 Delhi High Court.

The law is also very much clear much that non payment of retrenchment compensation to a Driver who was worked for more than 240 days will be illegal retrenchment. [State of MP through Conservator of Forest Versus Ram Prakesh Tiwari 2003 LLR 9 MP High Court].

7. The workman also stated and it is submitted that the workman so many times approached the management but the vindictive management rejected the lawful demand of the workman. The workman is unemployed after his best efforts the workman could not get the job any where and still without job.

8. That prior to the termination of the workman the management had not served any show cause notice and or charge sheet to the workman and also the management had not initiated any enquiry against the workman. The disciplinary enquiry is imperative.

It is correct that the management had not issued any appointment letter. The identity card was issued by the management to the workman and the salary receipt by ways of attendance register is also opn record as EX A-1 to A-9. The management has not placed any document to this effect and as such the adverse inference goes against the management. The management has never given any suggestion in this point that the workman was not the employee of the management, therefore the adverse inference goes against the management. It means that the workman was the employee of the management. Therefore, the employer and employee relations exists.

The termination of services of the employee without holding any enquiry of affording him an opportunity to put forth his case. Depriving him of his livelihood. Relief - termination of services of a workman- Held illegal being violation of principle of natural justice workman was ordered to be reinstated with 50% of back wages. D.K. Yadav Versus M/s. J.M.A. Industries Ltd. 1993 LLR page 584 [SC].

The law is very much clear as per section 2[oo] and 25 F , Abandonment of services without enquiry will be retrenchment section 25 B & 25 F -When services of a workman who has completed 240 days will amount to retrenchment- The question is whether it is violation of Section 25F of the Industrial dispute Act-In as much as the petitioner has put in 240 days of services and is a workman under section 2[s] of the I.D. Act, held termination without enquiry is violation of section 25 F of the Industrial dispute Act. The management directed to reinstate the petitioner employee with back wages. [Smt. Muththabranam Versus Presiding Officer, Labour court, Coimbatore & Another 2002 LLR 202 [Madras High Court].

9. That the workman has raised the dispute against the management before the conciliation officer but the management did not cooperate and as such the conciliation officer submitted his failure report to the appropriate Government and as such the appropriate government referred the said dispute to this Hon'ble Court for adjudication.

10.That it is also very much clear that the management not allowed the workman to report for duty thereby the management terminated the services of the workman on 07.12.1995 without any cause or reason. At the time of termination of the workman the management had not paid any terminal benefits to the workman.

11.That the management illegally and unjustifiably terminated the services of the workman without any cause or reasons. No terminal benefits were paid at the time of illegal termination of the workman. The management prior to terminate the services of the workman the management has not initiated any departmental enquiry against the management has not initiated any departmental enquiry against the management as the management has not issued any type of show cause notice and or charge sheet to the workman. The said terminated of the workman is illegal and inoperative and the same void abinitio.

12. That the workman since the date of termination is unemployed and after his best efforts the workman could not get any job any where.

That the workman so many times approached the management but the revenge full attitude of the management declined the requet of the workman.

In view of the above, it is, therefore, respectfully prayed to this Hon'ble Court to kindly pass the directions to the management to reinstate the services with consequential benefits and the award be pass accordingly in favour of the workman and against the management in the interest of justice and to answer the reference accordingly.

In this background I am deciding the case in the light of pleadings & evidence on record including the principles laid down in cited rulings as well as settled law on the relevant points.

Perusal of following question of determination mentioned in schedule of reference.

"Whether the termination of the management of I.B.P. Co. Ltd. in terminating the services of Sh. Chatter pal, sweeper, w.e.f 7.12.95 is justified, legal and fair?" which shows that burden of proof of this question of determination lies on management especially in the instant case wherein workman has filed his oral & available documentary evidence in rebuttal no evidence has been filed by management.

It is relevant to mention here that in the instant case management's failure to produce the attendance register to controvert the workman's claim as to the number of days he had actually worked, will lead to an inference of the correctness of the workman's claim as laid down in case of H.D. Singh V/s Reserve Bank of India (1983) 4SCC 201.

It is further relevant to mention here that principle laid down in case of Rampat V /s Presiding Officer, Industrial Tribunal-Cum-Labour Court, Panipat and Another, 2013 LLR (Punjab & Haryana High Court) is inapplicable in the instant case because workman not only filed identity card but filed several other documentary evidence to establish his claim against which no rebuttal documentary evidence by management filed.

It is also relevant to mention here that principle laid down in case of Anand Prakash V/s Godrej Sara Lee Ltd. 2009 LLR 564 (Delhi High Court) doesnot favour to respondent rather it favours to workman.

So far principle laid down in case of Vinod Kumar II V/s Presiding Officer, Labour Court, Agra & Another, 2005 LLR 1229 (Allahabad High Court) is inapplicable because it is based on Section 4K -U.P. Industrial Dispute Act which is not under consideration in the instant case.

It is further relevant to mention here that principle laid down by their Lordship of Hon'ble Supreme Court in case of Steel Authority of India Ltd. & Other Vs. National Union Water Front Workers & Others, 2001 Lab. IC 3656 (Supreme Court) is not at all favorable to management.

In addition to its evidence of MW1 Smt. Poonam Chopra is not based on personal knowledge but based on those documents of which no original or photocopies are filed by management. It is further relevant to mention here that management witness admitted the material fact that claimant Chattar Pal worked as sweeper in the guest house of the respondent company since 1987 till 1995 continuously. Management witness also admitted certain other material facts which prove the case of workman.

In this background management through its evidence could not establish its case rather proved the case of workman.

In this background there is no option ot his Tribunal except ot decide question of determination No. 1 mentioned in the Schedule of reference in favour of workman and against management. Which is accordingly decided.

In the light of contentions and counter contentions I perused the settled law of Hon'ble Supreme court on the point of reinstatement and grant of back wages which shows that reinstatement is not a necessary consequence wherever termination is held illegal. Depending upon the facts of each case a suitable compensation can be awarded. In Assistant Engineer, Rajasthan Dev. Corporation and Anr Vs. Gitam Singh, (2013)11 LLJ 141 Hon'ble Supreme Court has held that reinstatement of workman with continuity of service and 25% back wages was not proper in the facts and circumstances of the case and the compensation of Rs.50,000/-(Rs. Fifty Thousand Only) shall meet the ends of justice. In Jagbir Singh Vs. Haryana State Agriculture Marketing Board & Anr AIR 2009 Supreme Court 3004, Hon'ble Supreme Court held thus "the award of reinstatement with full back wages in a case where the workman has completed 240 days of work in a year preceding the date of termination particularly, daily wagers has not been found to be proper by this Court and instead compensation has been awarded." In catena of Judgments, Hon'ble Supreme Court has taken a view that reinstatement is not automatic, merely because the termination is illegal or in contravention of S-25-F of the Industrial Dispute Act. In Talwara Co-operative credit and service society Limited Vs. Sushil Kumar (2008) 9 SCC 486, Hon'ble Supreme Court held thus," grant of relief of reinstatement, it is trite, is not automatic. Grant of back wages is also not automatic."

Workman of the instant case was not appointed by following due procedure and as per rules. He had rendered service with the respondent as a casual worker, thus. Compensation of Rs. 50,000/- (Rs. Fifty thousand only) by way of damages as compensation to the workman/claimant by Management after expiry of period of limitation of available remedy against Award. That will meet the ends of Justice.

Thus Reference is decided in favour of workman and against Management.

Award is accordingly passed.

Dated : 7.3.2014

HARBANSH KUMAR SAXENA, Presiding Officer

नई दिल्ली, 2 अप्रैल, 2014

का.आ. 1224.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बी.सी.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ संख्या 47/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 2-4-2014 को प्राप्त हुआ था ।

[सं. एल-20012/171/2005-आईआर (सी एम-I)]
एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 2nd April, 2014

S.O. 1224.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 47/2006) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad as shown in the Annexure in the Industrial Dispute between the management of M/s. BCCL, and their workman, which was received by the Central Government on 2/4/2014.

[No. L-20012/171/2005-IR(CM-I)]
M. K. SINGH, Section Officer

ANNEXURE
BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO.I), DHANBAD

IN THE MATTER OF A REFERENCE U/S 10(1) (D) (2A) OF I. D. ACT, 1947

Ref. No. 47/2006

Employers in relation to the management of Bhowra Area M/s. BCCL

And

their workman

Present : Sri Ranjan Kumar Saran, Presiding Officer

Appearances:

For the Employers :- Sri U.N. Lall, Advocate

For the Workman :- Sri R. Rai, Rep.

State : Jharkhand Industry : Coal

Dated : 18-2-2014

AWARD

By Order No. L-20012/171/2005-IR (CM-I), dated 01/06/2006, the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub -section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal:

SCHEDULE

" Whether the demand of the Bihar Mines Lal Jhanda Mazdoor Union from the management of E. J. Area of M/s. BCCL from regularizing Shri Manik Chandra Sarkar, Typist as X-Ray Technician Gr. 'C' is justified? If so, to what relief is the concerned workman entitled and from what date?"

2. The case is received from the Ministry of Labour on 20.06.2006. After receipt of the reference, both parties are noticed. The sponsoring Union files their written statement on 11.07.2006. Thereafter the management files their written statement-cum-rejoinder on 07.08.2008. Rejoinder and document also filed by both side.

3. The claim of the workman is, he be regularized as radiographer. It is his case that he was appointed as clerk but he is doing the work of radiographer technician, but he has also admitted, that he did not have radiographer diploma. Clerk grade is admittedly different grade from the radiographer. The said fact has been admitted by the workman in his evidence (WW-I).

4. Moreover, the case of the management is that the workman is not having any requisite degree/diploma for the job of X-Ray Technician and this is the cadre scheme for ministerial cadre.

5. Considering the facts and circumstance of this case, I hold that change of grade is not permissible. Hence the demand of Bihar Mines Lal Jhanda Mazdoor Union from the management of E. J. Area M/s. BCCL to regularize Sri Manik Chandra Sarkar typist as X-Ray technician Gr. "C" is not justified so, he is not entitled to get any relief.

This is my award.

R. K. SARAN, Presiding Officer

नई दिल्ली, 2 अप्रैल, 2014

का.आ. 1225.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार ईस्को के प्रबंध तंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ संख्या 8/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 2-4-2014 को प्राप्त हुआ था ।

[सं. एल-20012/288/2003-आईआर (सी एम-I)]
एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 2nd April, 2014

S.O. 1225.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 8/2013) of the Central Government Industrial Tribunal-cum-Labour

Court No. 1, Dhanbad as shown in the Annexure in the Industrial Dispute between the management of M/s. IISCO and their workman, which was received by the Central Government on 2/4/2014.

[No. L-20012/288/2003-IR(CM-I)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO.1), DHANBAD

In the matter of a complaint U/s 33(A) of I.D. Act, 1947

Lok-Adalat

COMPLAINT NO. 8/2013

(Arising out of Ref. 44/2010)

Smt. Sindhu Sinha W/o Late Arvind Kumar Sinha
Posted at Accounts Deptt. Central Office, IISCO,
Steel Plant, Steel Authority of India Ltd.
P.O.+ P.S.-Chasnalla, Distt. Dhanbad ...Complainant

Vs.

General Manager, IISCO,
Chasnalla Colliery, M/s. IISCO Ltd.
P.O.+P.S.- Chasnalla, Distt. Dhanbad ...Opp. Party

Present : Sri Ranjan Kumar Saran, Presiding Officer

Appearances:

For Complainant : Sri P. N. Singh, Advocate

For Opp. Party : Sri D. K. Verma, Advocate

State : Jharkhand Industry : Coal

Dated : 12-2-2014

AWARD

2. Complaint received. Admitted. Notice issued to other side. After certain date, the learned counsel for the Complainant files an application for withdrawal of the same. Hence the complaint is withdrawn. Award passed. Communicated.

This is my award.

R. K. SARAN, Presiding Officer

नई दिल्ली, 2 अप्रैल, 2014

का.आ. 1226.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बी.सी.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, धनबाद के पंचाट (संदर्भ संख्या 76/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 2-04-2014 को प्राप्त हुआ था ।

[सं. एल-20012/90/2004-आईआर (सी-I)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 2nd April, 2014

S.O. 1226.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 76/2004) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Dhanbad as shown in the Annexure in the Industrial Dispute between the management of M/s. BCCL and their workman, which was received by the Central Government on 2/4/2014.

[No. L-20012/90/2004-IR(C-I)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO.2), AT DHANBAD

PRESENT :

Shri Kishori Ram, Presiding Officer

In the matter of an Industrial Dispute under Section 10(1)(d) of the I.D. Act, 1947

REFERENCE NO. 76 OF 2004.

PARTIES : The Vice President,
Bihar Colliery Kamgar Union,
At/PO: Amalabad Colliery, Dhanbad
Vs. The General Manager
W. J. Area of M/s. BCCL, PO: Monidih,
Distt. Dhanbad.

APPEARANCES :

On behalf of the Workman /Union : Mr. S.C. Gaur, Ld. Advocate

On behalf of the Management : Mr. D. K. Verma, Ld. Advocate

State : Jharkhand Industry : Coal

Dated, Dhanbad, the 26th Feb., 2014

AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Sec. 10 (1) (d) of the I.D. Act,1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/90/2004-IR(C-I) dt 02.07.2004.

SCHEDULE

"Whether the action of the Management of BCCL, W. J. Area to dismiss Bhagwat Mahato from service w.e.f. 21.06.2001 is just, fair and legal? If not, to what relief Shri Bhagwat Mahato entitled."

On receipt of the Order No. L-20012/90/2004-I.R.(C-I) dt 02.07.2004 of the above mentioned reference from the Government of India, Ministry of Labour, New Delhi for adjudication of the dispute, the reference Case No. 76 of 2004 was registered on 9th July, 2004 and accordingly an order to that effect was passed to issue notices through

the Registered Post to the parties concerned, directing them to appear in the Court on the date fixed, and to file their written statements along with the relevant documents. In pursuance of the said order, notices by the Registered Post were sent to the parties concerned.

Both the parties made their appearances personally as well as through their Ld. Advocates and respectively filed their pleadings and their documents concerned, and contested accordingly.

2. The case of sponsoring Bihar Colliery Kamgar Union for workman Bhagwat Mahato in brief is that the workman was appointed as Miner/Loader in the year 1997 while he was quite young. He worked upto 14.5.1999.He was sincere, devoted and laborious worker for the highly tough job in the Mine full of coal dust, due to which he fell ill, and went his village home where he remained for treatment of jaundice upto 8.9.1999. He returned with a Medical certificate and reported with his duty on 9.9.1999,but he was denied to join his duty. His absence due to illness beyond control was only for a period of four months. Though chargesheet was issued, he did not get it, so he did not file any explanation. He was dismissed by the Project Officer, 20/21 Pits Colliery from the services of M/s. BCCL on 21.06.2001. He made the mercy Appeal through the proper channel to the General Manager, W.J. Area of M/s BCCL on 9.02.2002 for its consideration as per the Certified Standing Orders of the Company, but denying the principles of natural justice, the G.M. unreasonably decided to remain him dismissed, without hearing his mercy Appeal.Besides, his dismissal was excessively harsh, disproportionate and oppressive.

Not any rejoinder filed on behalf of the workman.

3. Whereas, challenging the maintainability of the Reference either in law or in fact, the case of the O.P./ Management with categorical denials is that the workman was a habitual absentee, and never regularly performed his duty as evident from his last three attendances 41, Nil and 25 days in the years 1997 to 1999 respectively. He began to absent unauthorizedly and unreasonably from his duty w.e.f. 15.5.1999. So he was issued the charge sheet No. 3613 dt. 9.9.99 for his misconduct under the Certified Standing Order of the Company. He did not submit his reply to it. Finding no alternative, the Management appointed the Dy. Personnel Manager of the Colliery as the Enquiry Officer for fairly conducting domestic enquiry into the chargesheet. In spite of several notices dt. 4.12.1999, 8.2.2000 and lastly on 15.5.2000 to the workman on his home address and on the Notice Board of the Colliery, he did not turn up before the Enquiry Officer. At last, the Enquiry Officer conducted ex-parte enquiry in accordance with the principle of natural justice, and submitted his enquiry report, holding the charges proved against him. Even on supply of the copy of the enquiry report to the workman for submitting his explanation, he did not submit his any explanation. On consideration of the enquiry proceeding, enquiry report and last three years' attendance of the workman, the Disciplinary Authority dismissed him from the service of the Company which is legal and justified. The O.P./Management sought permission to adduce evidence afresh to prove the charges, in case the domestic enquiry is held unfair and improper at the preliminary enquiry.

4. The O.P./Management in its rejoinder has specifically denied the all the allegations of the workmen, and stated that the workman after getting his appointment was all along reluctant to perform his duty, and to absent from duty unauthorizedly as previously as his past attendance was very poor. Besides, he did not deliberately reply to the charge sheet.

FINDING WITH REASONS

5. In the instant case, consequent upon the Order No. 9 dt. 6.4.2006 of the Tribunal at the Preliminary Point, the domestic enquiry was held not fair, proper and in accordance with the principle of natural justice. In result, the O.P./Management has afresh examined its witnesses namely, MWI Anil Roy, MW2 Pawan Kumar Mahato, both the Leave & Sick Clerks, and MW3 Ashish Gohe, the Asstt.Manager (HR/Personnel) at Murlidih 20/21 Pits colliery of M/s. BCCL on merits.

Mr. D.K.Verma,the Ld.Advocate for the O.P./ Management has submitted that the chargesheeting of the workman for his unauthorized absence from his duty w.e.f. 15.5.1999 as orally asserted by all the three Management witnesses (MWs 1 to 3) on merits is an acknowledged fact that despite several notices, the non- appearance of the workman resulted in the ex-parte enquiry; the workman devoid of his any justification for his absence from duty as usually in his previous years was dismissed as per the letter dt.18.6.2001 which as quite just and proper.

Whereas Mr. S.C. Gaur, the Learned Counsel for the Union/workman has to contend that admittedly the General Manager of the W.J.Area is the Dismissal Authority as per the provision of the Certified Standing Orders of BCCL,but in the instant case, the G.M. of the Area unmindfully approved it only by two words "Dismissal Approved", and the G.M. is the Appellate Authority, so once he approved the dismissal, he could not sit in appeal, the workman was prejudiced, as his mercy appeal through received, could not be replied to the workman; thus the order of dismissal is bad in law as held in the case of Pandav Kumar Vs .Union of India reported in 2012 (2) JLJR 129. On meticulous study of the ruling as relied by Mr.Gaur,1 find that it relates to a case wherein petitioner could not communicate the authority regarding extension of leave and thereafter submitted an application/representation for extension of leave, but no reply was given by the concerned authorities, absence found without any

application or prior permission may amount to unauthorized absence, but it does not always mean willful, there may be different eventualities due to which an employee may abstain from duty, including compelling circumstances beyond his control like illness Disciplinary Authority is required to prove that absence is wilful in absence of such finding, absence will not amount to misconduct, so it was quashed and petitioner was ordered to be reinstated (Paras 11, 15 & 19)

But at variance with the cited case, the instant case reflects all along absence of the workman from his duty without any permission or reasonable cause, rather his quite willful absence as evident from his conducts. In this circumstance, the aforesaid ruling holds not good with the case under adjudication.

In view of the above facts and circumstances as orally brought on the case record, the Tribunal has found that the dismissal of the workman for unauthorized absence appears to be not only harsh but also disproportionate to the nature of it, rather unjustified; therefore, the workman is entitled to the relief of his re-instatement under Sec.11 A of the Industrial Dispute Act, 1947.

In result, it is, in the terms of the reference, responded, and hereby

ORDERED

That the Award be and the same is passed that the action of the Management of the BCCL,W.J. Area to dismiss on Bhagwat Mahato from service w.e.f. 21.6.2001 is quite unjust, unfair and illegal. Therefore, Sri Bhagwat Mahato is entitled to re-instatement but without back wages.

KISHORI RAM, Presiding Officer

नई दिल्ली, 4 अप्रैल, 2014

का.आ. 1227.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार पवन हंस हेलिकाप्टर के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, नई दिल्ली के पंचाट (संदर्भ संख्या 103/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 4-4-2014 को प्राप्त हुआ था ।

[सं. एल-20013/02/2014-आईआर (सी एम-I)]
एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 4th April, 2014

S.O. 1227.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award Ref. No. 103/2004 of the Central Government Industrial Tribunal-cum-Labour Court No. 1, New Delhi as shown in the Annexure in the Industrial Dispute between the management of M/s. Pawan Hans Helicopter Ltd., and their workmen, which was received by the Central Government on 4/4/2014.

[No. L-20013/02/2014-IR(CM-I)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE DR. R.K.YADAV, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1, KARKARDOOMA COURTS COMPLEX, DELHI.

I.D.No.103/2012

Capt. R.K.Sareen,
R/o 12/2 Subash Nagar,
New Delhi -110027 ...Workman

Versus

The General Manager,
Pawan Hans Helicopters Ltd.
Safdarjung Airport,
New Delhi - 110003 ...Management

AWARD

Pawan Hans Helicopter Ltd. (hereinafter referred to as the rnanagement) availed services of Col. R.K. Sareen, skilled single engine pilot, on deputation with effect from 21.03.2009. On his retirement from the Indian Army on 31.05.2011, Col. Sareen was appointed as Assistant Flight Safety officer with effect from 01.06.2011 by the management. Lastly, on 01.08.2011, he was appointed as 'Pilot B' on contractual basis for a period of five years or till he attains age of 60 years, which ever was to be earlier.

2. On 15.01.2012, Col. Sareen undertook flying duties as pilot in command on Dhruv Advanced Light Helicopter, VT-BSN at Raipur Airport. The helicopter met with an accident soon after it took off, descended and struck against the runway of the airport. It was badly damaged. However, no casualty took place. Two crew members sustained serious injuries, while three others sustained minor injuries in the accident. Enquiry was ordered by the Ministry of Civil Aviation, Government of India, New Delhi, by way of appointment of an enquiry committee under rule 74 of the Aircraft Rules 1937(in short the Rules) to determine causes and contributory factors to the accident.

3. The management asked Col. Sareen to attend a refresher training from 13.02.2012 to 15.02.2012, to be followed by a test. He appeared in the test. However, due to his unsatisfactory performance, he was instructed to undergo retest vide letter dated 02.03.2012. Col. Sareen refused to undergo retest. His performance and ability to fly twin engine Dhruv helicopter could not be assessed by the management, after the accident referred above. Show cause notice was served on Col. Sareen calling upon him to explain as to why disciplinery action should not be initiated for his lapses to obey command of taking retest, besides termination of his contract of service. Reply to the

said show cause notice was submitted by the claiment, which was found not to be satisfactory. The management terminated services of Col. Sareen, vide its letter dated 01-6-2012.

4. Aggrieved by the act of the management, Col. Sareen moved Ombudsman, seeking reinstatement in service of the management. When his grievances were not addressed to he approached the Conciliation Officer for redressal of his grievance. Conciliation Officer called upon the management for conciliation of the dispute, by way of issuance of notice dated 05.08.2012. Claimant alleged that he had moved application before the Conciliation Officer on 25.07.2012 and period of 45 days, as stipulated under sub-section (2) of section 2A of the Industrial Disputes Act, 1947 (in short the Act) stood expired and filed claim statement before this Tribunal for adjudication of his dispute, without being referred by the appropriate Government under sub-section (1) of section 10 of the Act.

5. Since the dispute filed by Col. Sareen was within period of limitation as enacted by sub-section (3) and prima facie satisfied requirement of sub-section (2) of section 2A of the Act, it was registered as an industrial dispute.

6. Claim statement was filed by Col. Sareen pleading therein that his services were availed on deputation by the management with effect from 21.03.2009, since there was acute shortage of skilled pilots with them. He was selected as a pilot by the management after detailed screening of many pilots. His services were so availed, by taking special sanction from Government of India under rule 160 of the Rules. After his retirement from the Indian Army on 31.05.2011, he was appointed as Assistant Flight Safety Officer by the management with effect from 01.06.2011. Formal appointment for a period of 5 years was issued in his favour by the management on 01.08.2011. He was selected by the management to fly twin engine Dhruv helicopter as captain, on consideration of his initial experience of flying single engine helicopter. He was also selected twice to undertake accident investigation courses. Based on his past performance and excellent service record, he was given additional charge of the post of Assistant Flight Safety Officer, Northern Region, by the management. Due to violation of flight safety rules, issued by Director General, Civil Aviation, 5 helicopters met with accidents in a span of one year in 2011. Being Assistant Flight Safety Officer, he could not violate safety rules, when he was asked to fly Dhruv helicopter in Gadchiroli in November, 2011. He reported the matter to the management, pursuant to its whistle blower policy vide his letter dated 11.08.2011. No cognizance of his letter was taken, hence he was compelled to stop flying for a period of 10 days in Gadchiroli. When lot of pressure was put on him, he resumed flying on verbal assurance of the management to protect interest of pilots. He resumed flying in good faith when directions were given to him in that regard through SMS message. Unfortunately, he also met with an accident on 15.01.2012. However, he was able to save five precious lives in the crash by the grace of God. Instead of holding his hands and reward him for saving lives, the management started harassing and victimizing him from very next day of the accident. His flying pay was stopped with effect from 15.01.2012. Detachment allowance was illegally deducted out of his wages for the month of March 2012. Co-pilot, who was medically unfit, was paid more than the wages paid to him for March 2012. He was victimized by the management by way of calling upon him to undergo illegal tests and retests. It was so done when he testified facts against the management in the enquiry being convened by the Government of India, in respect of the accident dated 15.01.2012. He had passed the test conducted by Director General, Civil Aviation and Hindustan Aeronautics Ltd., which certificates were valid for a period of 5 years. Despite validity of the tests referred above, the management wanted to put him to test and retest, after the accident referred above. Even otherwise, pilots undergo proficiency test every six months. Proficiency test was passed by him on 08.09.2011 with good performance. Based on that test, he was subsequently cleared to fly as captain on Dhruv helicopters. During currency of above proficiency certificate, he was ordered to take test and retest in a biased manner.

7. Claimant projects that he appeared in the test and passed it with margin for the status of captain. However, there was no restriction on him for flying as co-pilot. Other pilots, who miserably failed in the test, were declared pass in retest. Show cause notice was served calling upon him to detail reasons for not appearing in retest. He informed the management on 09.03.2012 for reconsideration of their decision for holding a retest on 13.03.2012. No reply to the said letter was given. He believed that his justification for exemption from retest has been accepted, since test conducted by Director General, Civil Aviation, was valid for a period of five years. He was being tested by enquiry committee on that aspect too.

8. Claimant projects that when a pilot is availing "off period", he is not required to attend to his duties. However, he was asked to attend to his duties within a short notice. The management violated air safety circular No. 09 of 2009. His monthly flying allowance was also not paid to him. A sum of Rs. 30 lakh towards accidental insurance, besides Rs.30 lakh towards enhanced insurance for operating in anti naxal operation was also not paid to him. Two months notice pay, as contemplated in appointment letter, was also not paid. His services were illegally terminated, claiming that his past performance was not good. Prior to that date no warning or any adverse comments was served upon him. On the other hand, on account of his sincere work, additional responsibility of Assistant Flight Safety Officer for Northern Region was given to him. His services were

terminated without holding any domestic enquiry and in violation of principles of natural justice .

9. Claim has been made that he approached the Conciliation Officer (Central) on 25.07.2012 seeking redressal against illegal termination of his services. Since conciliation could not be done and period of 45 days expired, he invoked jurisdiction of this Tribunal for adjudication of the dispute. He presents that contents of show cause notice projects a different case than the one mentioned in the termination letter. He had rendered continuous service of more than 240 days from 02.08.2011 to 31.05.2012. Action of termination of his services does not withstand the protection available to him in the Act. He seeks reinstatement in service with continuity and full back wages.

10. In his claim statement, Col. Sareen presents various arguments relating to loss of licence insurance coverage of Rs.30 lakh, loss of salary of June and July 2011, overtime allowance, non-return of flying log book and encashment of leaves @ 21 days per year, which claim cannot be adjudicated with the present dispute, since sub-section(2) of section 2A of the Act permits a workman to raise a dispute, without being referred for adjudication by the appropriate Government under section 10 of the Act, in case of discharge, dismissal, retrenchment or otherwise termination of his services. Thus claim of insurance amount for loss of licence, loss of accidental insurance amount, loss of enhanced insurance of Rs.30 lakh for operating in anti naxal operation, non-payment of wages for June & July 2011, non payment of overtime allowance of two hours per day for 361 days, claim for encashment of leaves as well as for returning of flying log book will not fall within the ambit of sub-section (2) of section 2A of the Act. Hence, these claims are not taken into consideration in adjudication of the dispute raised under sub-section (2) of section 2A of the Act.

11. Claim was demurred by the management, pleading that the claimant was not a workman since he was appointed in supervisory/managerial capacity, being captain of a helicopter. He was drawing a salary of Rs. 1,22,175.00 per month and was at par with executives employed by the management. He does not answer status of a workman within meaning of section 2(s) of the Act. Even otherwise, he was employed for a specified period, in terms of appointment letter dated 01.08.2011. His contractual appointment was severed pursuant to terms of service, contained in the appointment letter. Monetary claims, made by the claimant, have no reference to validity of his termination order. He cannot make those claims in the present dispute.

12. Claimant approached this Tribunal in undue haste. As per notice served on the management, Conciliation Officer was holding conciliation proceedings on 20.09.2012. Claimant opted not to await result of the conciliation proceedings and filed the dispute in undue haste. Present claim is not maintainable at all on that count too.

13. Claimant did not have experience of flying Dhruv helicopters, before his appointment by the management. He had to execute a bond for his training, checks and tests. Additional assignment of Flight Safety Officer was given to the claimant on account of his supervisory and managerial expertise and not because of his excellence of past performance. There were approximately 150 pilots employed by the management on approximately 50 helicopters. There were 35 Dauphin medium helicopters, 01 Mi-172 helicopter, 07 Bell helicopters and 02 AS 350 B3 helicopters, besides 8 Dhruv helicopters on which the claimant was imparted training. The management performs operation and maintenance contract in respect of helicopters owned by Border Security Force and Oil and Natural Gas Corporation for fixed duration of 1-2 years, extendable at the option of the owner of Dhruv helicopter. After accidents, 2 Dhruv helicopters were destroyed and in one of the accidents, claimant was involved as a Captain. 2 Dhruv helicopters became non-operational and two were damaged in the accident. Thus, only 6 helicopters are operational and need of the management for pilots to operate helicopters has gone down. There is no need for any more Pilot B to operate Dhruv helicopters, pleads the management.

14. The helicopter, which met with an accident, was damaged not on account of any engineering or mechanical fault. It was damaged due to fault of the pilot. Claimant is making baseless allegations relating to violation of safety rules. He wrote letters to the management from November 2011 and even after the accident under reference. He twisted facts relating to violation of safety rules and stoppage of flying for a period of 10 days. In respect of the accident under reference, enquiry by Director General, Civil Aviation authorities is being conducted. When report would be received, it would be placed before the Tribunal. However, prima facie, management is of the opinion that the accident was caused due to pilot error. On account of his error, claimant put five human lives in jeopardy.

15. When a pilot is involved in an accident, he cannot be given flying duties unless cleared by Director General, Civil Aviation authorities, in that regard, pleads the management. The management has a right to take test, retest to assess performance and understanding ability of pilot to fly a helicopter. Claimant had not undergone any test, which was valid for a period of 5 years. He was asked to attend refresher training on 03.02.2012 to 15.02.2012, to be followed by a test. He appeared in the test, but due to his unsatisfactory performance, he was instructed to undergo retest, vide letter dated 02.03.2012. Since he refused to undertake re-test and claimed that he was not required to undergo retest, show cause notice was served upon him. When the claimant did not undergo retest, there was

no need for holding any departmental enquiry against him. Since show cause notice was served upon him, principles of natural justice were not violated. The management terminated services of the claimant pursuant to contract of service contained in his appointment letter. Claim put forward by Col. Sareen for reinstatement in service is not maintainable at all. Since termination of his services was in accordance with terms of appointment, he is not entitled to relief of reinstatement in service. His claim may be dismissed, being devoid of merits, pleads the management.

16. On pleadings of the parties, following issues were settled:

(i) Whether claimant is a workman within the meaning of section 2(s) of the Industrial Disputes Act, 1947?

(ii) Whether action of the management in terminating his services amounts to retrenchment within the meaning of section 2(oo) of the Industrial Disputes Act, 1947?

(iii) Whether the claimant is entitled to relief of reinstatement in service? If not what relief he is entitled?

17. In order to discharge onus resting on him, claimant testified facts in his favour. Shri Sanjiv Aggarwal detailed facts on behalf of the management. No other witness was examined by either of the parties.

18. Arguments were heard at the bar. Shri Devender Sharma, authorized representative, advanced arguments on behalf of the claimant. Shri Rajat Arora, authorised representative, raised submissions on behalf of the management. Written arguments were also filed by the claimant. I have given my careful considerations to the arguments advanced at the bar and cautiously perused the record. My findings on issues involved in the controversy are as follows:-

Issue No. 1

19. First and foremost contention advanced by the management is that Col. Sareen is not a workman. It has been projected that he was appointed in a supervisory/ managerial capacity, being Captain of the helicopter and drawing salary of Rs.1 ,22,175.00 per month, which was at par with the executives employed by the management. Contra to it, Shri Devender Sharma argued that Col. Sareen was appointed as Pilot 'B' by the management to predominantly perform job of flying helicopter as a Pilot in Command. Hence it does not lie in the mouth of the management to assert that he is not workman within the meaning of section 2(s) of the Act.

20. In order to appreciate facts, it would be expedient to consider definition of the term 'workman'. The term "workman" has been defined by section 2(s) of the Act, which definition is reproduced thus:

"2(s) : Workman means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person-

(i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act 1950 (46 of 1950) or the Navy Act, 1957 (62 of 1957), or

(ii) who is employed in the police service or as an officer or other employee of a prison, or

(iii) who is employed mainly in a managerial or administrative capacity, or

(iv) who being employed in a supervisory capacity, drawn wages exceeding one thousand six hundred reupees per mensum or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature."

21. Definition of term workman contains three limbs. First limb of the definition gives statutory meaning of the word and determines a workman by reference to a person (including an apprentice) employed in an industry to do any manual, unskilled, skilled, technical, operative, clerical or supervisory work for hire or reward. The second limb is designed to include a person—(i) who have been dismissed, discharged or retrenched in connection with an industrial dispute, or (ii) whose dismissal, discharge or retrenchment has led to an industrial dispute, within the ambit of workman. However, the third part of the definition excludes the categories of persons specified in clause (i) to (iv) from the expression "workman". The definition does not state that a person, in order to be a workman should have been employed in a substantive capacity or on temporary basis in the first instance or after he is found suitable for the job after a period of probation. In other words, every person employed in an industry irrespective of his status—temporary, permanent or probationary—would be a workman. The expression "employed" has at least two known connotations, that is, a relationship brought by express or implied contract of service in which employee renders service for which he is engaged by the employer and the latter agrees to pay him in cash or kind, as agreed between them or statutorily provided. It discloses a relationship of command and obedience. Reference can be made to the precedent in Food Corporation of India's case [1985 (2) LLJ 4].

22. In his affidavit Ex.WW1/A, claimant presents that he was appointed by the management in its service to fly Dhruv helicopter. Appointment letter Ex.WW1/1 was issued to him on 01.08.2011. Facts in this regard are not disputed by the management. When Ex.WW1/1 is scanned, it emerged over the record that claimant was appointed as "Pilot B" on contractual basis for a period of five years from the date of assuming flying assignment. It has been detailed therein that the claimant was entitled for flying related variable allowances like flying allowance, additional flying allowance, night halt, casualty excavation and pre-flight inspection allowance from the date of commencing flying Dhruv helicopter. His appointment was made subject to his possessing valid commercial helicopter pilot licence, issued by Director General, Civil Aviation/ Government approval under rule 160 of the Rules. Therefore, out of facts detailed by the claimant and those projected in his appointment letter Ex.WW1/1 it creep over the record that the claimant was appointed by the management to fly Dhruv helicopter.

23. As detailed by the claimant, the helicopter which he was flying met with an accident on 15.01.2012. He was flying that helicopter in the capacity of pilot in command. Brig. Tiwari worked as his co-pilot on the said helicopter that day. Shri Sanjiv Aggarwal also reaffirms those facts in his affidavit Ex.MW1/A, wherein he presents that the claimant was involved in the accident dated 15.01.2012, when he was working as pilot in charge of the helicopter. Brig. Tiwari was his co-pilot that day. Since claimant was pilot in charge of the helicopter, which met with an accident, he was grounded as per guidelines of the Director General, Civil Aviations, Ministry of Civil Aviation, Government of India, New Delhi. Therefore, above facts bring it to light of the day that the claimant was appointed as pilot in command by the management. Claimant used to fly Dhruv helicopter in discharge of his duties. On 15.01.2012, he was flying the Dhruv helicopter, which met with an accident. All these facts make me to announce that the claimant was working as Pilot in Command on Dhruv helicopter.

24. Pilot has been held to be a workman by High Court of Delhi in Mathur Aviation [1977 (2) LLJ 255]. The management has not been able to project that the claimant was performing supervisory or managerial or administrative duties. As such, he falls within the ambit of definition of workman as contained in section 2(s) of the Act. The issue is, therefore, answered in favour of the claimant and against the management.

Issue No. 2

25. In order to discharge onus resting on him, claimant presses his affidavit Ex.WW1/A as evidence. He unfolds therein that he survived helicopter crash on 15.01.2012, which crash occurred due to various violations of DGCA rules and shortcuts adopted by the management to earn maximum revenue in a wrong way. He asserts that details of violation of rules and shortcuts adopted by the management are given in the claim statement. Enquiry Team, appointed by the Ministry of Civil Aviation, Government of India, asked him to tender his old flying log books, in order to ascertain his training and standards obtained in 1985-86. This act projects that the management is biased against him and now trying to investigate initial flying training obtained by him. Test conducted in 2009 on Dhruv helicopter (twin engine) has not been taken into consideration. He agitates that media reports, appearing in newspapers after the air crash, projects that the accident was attributed to automatic flight control system failure. It rules out lack of piloting proficiency on his part. The management claimed in its written statement that it was of prima facie view that the accident was caused due to pilot error. According to him, above claim projects that the management had pre-judged the matter and not awaited for outcome of the report of the Enquiry Team .

26. He has been made a victim of unfair labour practice, since cause of accident has not been made known to him. He projects that the management violated their own whistle blower policy, by not protecting him. In spite of writing various letters as per whistle blower policy, neither simulator training for Dhruv helicopter nor IR training and continuity training was given to the pilots, before clearing them as Captain. It has been falsely claimed by the management that he had not passed the test and in case he has passed one, it was not valid for five years. Facts have been concealed by the management on the matter of test/ retest. Pilots, who have fared extremely poor in the test, were declared pass without making the result public/ transparent. Pilots, senior to him, were not cleared to fly as Captain whereas he was cleared due to his skills and proficiency. Capt. J.S. Jodha and Capt. M.S. Chauhan were terminated not for their poor performance but on reaching maximum age limit for flying. Findings of the Enquiry Team have been made known to the management in violation of DGCA rules. The claimant projects that he was not allowed to participate in the enquiry, produce documents and cross examine the witnesses.

27. The Director General, Civil Aviation, had grounded entire fleet of Dhruv helicopters due to technical flaws, which fact vindicates his stand to the effect that the crash was due to technical fault. The Ministry of Home Affairs, Government of India, New Delhi, had also grounded entire Dhruv fleet of BSF due to two crashes in a short span. The Director General, Civil Aviation, while making assessment on the accident brought out serious supervisory lapses on the part of the management. Sequences of events, leading to illegal termination, were created when he was obeying whistle blower policy in the interest of the management, pilots and passengers to avoid any further fatality.

28. A number of new flying commitments were undertaken by the management by way of flying its

helicopters. The claimant was appointed to undertake this commitment, but was terminated from service on flimsy grounds. The last pilot, recruited under similar circumstances, was not retrenched. Three months notice was not given, as per terms of his appointment. No prior permission was sought from the Government before his retrenchment. The claimant was flying under rule 160 of the Rules. By taking advantage under this rule, the management was utilizing pilots without simulator training, IR training and continuity training for day and night flying, violating DGCA rules. The management had full faith in proficiency and competence of the claimant, that is why he was sent to Raipur to carry out flying task.

29. In his affidavit Ex.MW1/A, tendered as evidence, Shri Sanjiv Aggarwal unfolds that the claimant was appointed on contractual basis vide letter dated 01.08.2011. In letter of appointment, it has been stipulated that services of the claimant could be terminated without assigning any reason or notice thereof at any point of time. Claimant was involved in the accident on 15.01.2012, when he was flying as pilot in command on the helicopter. In that accident, co-pilot, namely, Brig. Tiwari sustained spinal fracture injuries and three crew members sustained minor injuries. Since the claimant was pilot in charge of the said helicopter, he was grounded as per DGCA guidelines, contained in Air Safety Circular dated 03.1.2009.

30. Shri Aggarwal deposed that pursuant to the said accident, claimant was asked to undergo refresher training from 13.02.2001 to 15.01.2012. Refresher training covers special visual flight rules, advance light helicopter automatic flight control system and many other important aspects to make a pilot efficient in flying and controlling helicopters. The management was under an obligation to keep its pilots well acquainted with the helicopter system, meteorology, aerodynamics, emergencies etc. to make them efficient to operate holicopters and react to various situations. Simply by passing of air navigation and air regulation papers, a pilot cannot have full knowledge of technical, general and emergencies to be handled by him while flying. Entire fleet of Dhruv helicopters was grounded by DGCA after the major accident on 15.01.2001. Grave situation was caused when 22 Dhruv qualified pilots were kept out of flying. The above refresher training, which took place from 13.02.2014 to 15.02.2014, was followed by a test. The said test pertains to knowledge of aviation subjects like aircraft system, aerodynamics, meteorology, knowledge of flying and aircraft specifics etc. Test consists of papers to be attempted on emergencies, technical & general knowledge and awareness of the pilots. Claimant attended the refresher training. Since his performance was found not to be satisfactory he did not qualify the test. Other four pilots in command also could not qualify the test. The management took a lenient view and gave them another opportunity to quality the test. Claimant was asked to undergo re-test on 13.03.2012, vide letter dated 02.03.2012. Other pilots were also asked to go for refresher training and to appear in the test. Claimant did not appear in re-test, without any intimation/permission from the management. When claimant did not appear for retest, appropriate action was recommended against him by Com. Alok Kumar. Show cause notice dated 09.04.2011 was served on him. By not undergoing retest, claimant violated rules of discipline and administrative instructions. It was willful disobedience of orders of the management on the part of the claimant. Reply to show cause notice, submitted by the claimant, for his failure to appear in retest was found to be of no substance. Since the claimant was a contractual employee, his contract of employment was terminated vide letter dated 06.06.012. As per terms of his appointment, his performance was required to be reviewed quarterly during first year of his service and if fond unsatisfactory his services were liable to be terminated without any notice. Termination of his service was in consonance with terms of his appointment, contained in letter dated 01.08.2011.

31. When facts unfolded by the claimant and those detailed by Shri Aggarwal are scanned, it came to light that the claimant was appointed as "Pilot B" vide appointment letter dated 01.08.2011, proved as Ex.WW1/1. EX.WW1/1 highlights that the claimant was appointed for a period five years which term was to come to an end on the stipulated date.Performance or the claimant was to be reviewed quarterly during first year of service and on being found unsatisfactory, his services were liable to be terminated without any notice. Right was retained by the management to terminate contract of service of the claimant at any time by giving two months notice or salary in lieu thereof. In case of resignation, claimant was put under an obligation to give 6 months notice subject to completion of his contractual obligations laid down in the bond executed by him.

32. As detailed above Dhruv helicopter crashed on 15.01.2012, on which the claimant was flying as pilot in command. The management commanded the claimant to undergo refresher training from 13.02.2014 to 15.02.014, followed by a test. Claimant was declared unsuccessful in the test. He was ordered to undergo retest, vide letter dated 02.03.2012, proved as EX.MW1/1. The management projects that the claimant did not appear for retest, which action on his part amounts to violation of rules of discipline and adminis.trative instructions, applicable to him. He willfully disobeyed official order and as such a decision was taken to terminate his services. Terms of service, contained in letter appointment Ex.WW1/1, were invoked and services of the claimant were terminated, projects the management.

33. Question for consideration would be as to whether action of the menagement, in terminating services of the claimant, amounts to retrenchment? For an answer to this proposition, definition of the term "retrenchment",

enacted by section 2(oo) of the Act is to be taken of. The definite of the said term is extracted thus:

> "2(oo) "retrenchment" means the termination by the employer of the services of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include-
>
> (a) voluntary retirement of the workman; or
>
> (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or
>
> (bb) termination of the services of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or
>
> (c) termination of the services of a workman on the ground of continued ill-health".

34. Definition of retrenchment is very wide and in two parts. The first part is exhaustive, which lays down that retrenchment means the termination of the service of a workman by the employer "for any reason whatsoever' otherwise then as a punishment inflicted by way of disciplinary action. Thus main part of the definition itself excludes the termination of service, as a measure of punishment inflicted by way of disciplinary action from the ambit of retrenchment. The second part further excludes (i) voluntary retirement of the workman, or (ii) retirement of workman on reaching the age of superannuation, or (iii) termination of the service of a workman as a result of non-renewal of contract of employment, or (iv) termination of contract of employment in terms of a stipulation contained in the contract of employment in that behalf, or (v) termination of service on the ground of continued ill health of the workman. Reference can be made to the precedents in Avon Services (Production Agencies) (Pvt.) Ltd. (1979 (I) LLJ 1) and Mahabir (1979 (II) LLJ 363).

35. Sub Clause (bb) purports to exclude from the ambit of the definition of retrenchment (i) termination of the service of a workman as a result of non- renewal of the contract of employment between the employer and the workman concerned, on its expiry, or (ii) termination of the contract of employment in terms of a stipulation contained in the contract of employment in that behalf. The first part relates to termination of service of a workman as a result of non-renewal of the contract of employment between the employer and the workman concerned on its expiry. Thus "non-renewal of contract of employment" pre-supposes an existing contract of employment, which is not renewed. When services of an employee is terminated on account of non-renewal of contract of employment, between the employer and the workman, it does not amount to retrenchment. The second part refers to "such contract" being terminated under a stipulation in that behalf contained therein. The cases contemplated, under this part too, would not amount to retrenchment. However this sub-clause, being in the nature of an exception to clause (oo) of section 2 of the Act, is ruled to be construed strictly when contractual agreement is used as modus operandi to frustrate claim of the employee to become regular or permanent against a job. The adjudicator has to address himself to the question whether the period of employment was stipulated in the contract of employment as a device to escape the applicability of the definition of retrenchment. See Shailendra Nath Shukla (1987 Lab. I.C. 1607), Dilip Hanumantrao Shrike (1990 Lab. I.C. 100) and Balbir Singh (1990 (1) LLJ. 443).

36. On review of law laid by the Apex Court and various High Courts, a single Judge of the Madhya Pradesh High Court, in Madhya Pradesh Bank Karamchari Sangh (1996 Lab. I.C. 1161) has laid following principles of interpretation and application of sub-clause (bb) of clause (oo) of section 2 of the Act:

> "(i) that the provisions of section 2(oo)(bb) are to be construed benevolently in favour of the workman,
>
> (ii) that if the workman is allowed to continue in service by making periodic appointments from time to time, then it can be said that the case would not fall under section 2(oo) (bb),
>
> (iii) that the provisions of section 2 (oo)(bb) are not to be interpreted in the manner which may stifle the main provision,
>
> (iv) that if the workman continues in service, the non-renewal of the contract can be deemed as mala fide and it may amount to be a fraud on statute;
>
> (v) that there would be wrong presumption of non-applicability of section 2(oo)(bb) where the work is of continuous nature and there is nothing on record that the work for which a workman has been appointed had come to an end".

37. Whether provisions of retrenchment, enacted in the Act, provide for any security of tenure? Answer lies in negative. Provisions of retrenchment provide for certain benefits to a workman in case of termination of his service falling within the ambit of definition of retrenchment. On compliance of the requirements of section 25F or 25N and 25G of the Act, it is open to the employer to retrench a workman.

38. Termination of service of an employee during the period of probation was held to be covered by the exception contained in sub-clause (bb) of section 2(oo) of the Act, in

C.M.Venugopal (1994 (1) LLJ 597). As per facts of the case, Regulation 14 of the Life Insurance Corporation of India (Staff) Regulation 1962 empowered the Corporation to terminate the service of an employee within the period of probation. The employee was put on probation for a period of one year, which was extended by another year. Since he could not achieve the target to earn confirmation, his service was terminated in terms of Regulation 14 as well as order of appointment. The Apex Court ruled that the case was covered by the exception contained in sub-clause (bb), hence it was not retrenchment.

39. In Morinda Co-operative Sugar Mills Ltd. (1996 Lab. I.C. 221) a sugar factory used to employ certain number of workmen during crushing season and at the end to the crushing season their employment used to cease. The Supreme Court held that despite the fact that the workmen worked for more than 240 days in a year, cessation of their employment at the end of crushing season would not amount to retrenchment in view of the provisions of sub-clause (bb) of section 2(oo) of the Act. It was observed as follows:

> "4. It would thus be clear that the respondents were not working throughout the season. They worked during crushing seasons only. The respondents were taken into work for the season and consequent to closure of the season, they ceased to work.
>
> 5. The question is whether such a cessation would amount to retrenchment. Since it is only a seasonal work, the respondents cannot be said to have been retrenched in view of what is stated in sub-clause (bb) of section 2(oo) of the Act. Under these circumstances, we are of the opinion that the view taken by the Labour Court and the High Court is illegal. However, the appellant is directed to maintain a register for all workmen engaged during the seasons enumerated herein before and when the new season starts the appellant should make a publication in neighbouring places in which the respondents normally live and if they would report for duty, the appellant would engage them in accordance with seniority and exigency of work".

40. Above legal position was reiterated by the Apex Court in Anil Bapurao Kanase (1997 (10) S.C.C. 599) wherein it was noted as follows:

> "3. The learned counsel for the appellant contends that the judgment of the High Court of Bombay relied on in the impugned order dated 28.3.1995 in Writ Petition No.488 of 1994 is perhaps not applicable. Since the appellant has worked for more than 180 days, he is to be treated as retrenched employee and if the procedure contemplated under Section 25-F of the Industrial Disputes Act, 1947 is applied, his retrenchment is illegal. We find no force in this contention. In Morinda Coop. Sugar Mills Ltd. v. Ram Kishan in para 3, this Court has dealt with engagement of the seasonal workman in sugarcane crushing, in para 4, it is stated that it was not a case of retrenchment of the workman, but of closure of the factory after the crushing season was over. Accordingly, in para 5, it was held that it is not 'retrenchment' within the meaning of Section 2(oo) of the Act. As a consequence the appellant is not entitled to retrenchment as per sub- clause (bb) of Section 2(oo) of the Act. Since the present work is seasonal business, the principles of the Act have no application. However, this Court has directed that the respondent management should maintain a register and engage the workmen when the season starts in the succeeding years in the order of seniority. Until all the employees whose names appear in the list are engaged in addition to the employees who are already working, the management should not go in for fresh engagement of new workmen. It would be incumbent upon the respondent management to adopt such procedure as is enumerated above".

41. In Harmohinder Singh (2001 (5) S.C.C. 540) an employee was appointed as a salesman by kharga canteen on 1.6.74 and subsequently as a cashier on 9.8.75. The letter of appointment and Standing Orders, inter alia, provided that his service could be terminated by one month's notice by either party. He was served with a notice to the effect that his service would be relinquished with effect from 30.6.1989. Relying precedent in Uptron India Ltd. (1998 (6) S.C.C. 538) the Apex Court ruled that contract of service for a fixed term are excluded from the ambit of retrenchment. Decision in Balbir Singh (supra) was held to be erroneous. It was also ruled that principles of natural justice are not applicable where termination takes place on expiry of contract of service.

42. In Batala Coop. Sugar Mills Ltd. (2005 (8) S.C.C. 481) an employee was engaged on casual basis on daily wages for specific work and for a specific Period. He was engaged on 1-4-1986 and worked upto 12-2-94. The Labour Court concluded that termination of his services was violative of provisions of section 25-F of the Act, hence ordered for his reinstatement with 50% back wages. Relying precedents in Morinda Coop. Sugar Mills (supra) and Anil Bapurao Kanase (supra) the Apex Court ruled that since his engagement was for a specific period and specific work, relief granted to him by the Labour Court can not be maintained.

43. The Apex Court dealt with such a situation again in Darbara Singh (2006 LLR 68) wherein an employee was appointed by the Punjab State Electricity Board as peon on daily wage basis from 8.1.88 to 29.2.88. His services were extend from time to time and finally dispensed with in

June 1989. The Suprerne Court ruled that engagement of Darbara Singh was for a specific period and conditional. His termination did not amount to retrenchment. His case was found to be covered under exception contained in sub-clause (bb) of section 2(oo) of the Act. In Kishore Chand Samal (2006 LLR 65), same view was 'maintained by the Apex Court. It was ruled therein that the precedent in S.M. Nilajkar (2003 (II) LLJ 359) has no application to the controversy since it was ruled therein that mere mention about the engagement being temporary without indication of any period attracts section 25 F of the Act if it is proved that the concerned workman had worked continuously for more than 240 days. Case of Darbara Singh and Kishan Chand Samal were found to be relating to fixed term of appointment.

44. In BSES Yamuna Power Ltd. (2006 LLR 1144) Rakesh Kumar was appointed as Copyist on 29.9.89, initially for a period of three months as a daily wager. His term of appointment was extended up to 20.9.90. No further extension was given and his services were dispensed with on 20.9.90. On consideration of facts and law High Court of Delhi has observed thus:

> " ... In the present case, the respondent was appointed as a copyist for totalling the accounts of ledger for the year 1986-87 and then for 1987-88. His initial appointment was for the period of three months. It was extended from time to time and no extension was given after 20th September, 1990. He was appointed without any regular process of appointment, purely casual and on temporary basis for specific work of totalling of ledger. When this work was over, no extension was given. I consider that appointment as that of the respondent is squarely covered under section 2(oo)(bb) of the Act. Giving of non extension did not amount to termination of service, it was not a case of retrenchment" .

45. Precedents, handed down by Allahabad High Court in Shailendra Nath Shukla (supra), Bombay High Court in Dilip Hanumantrao Shirke (supra), Punjab & Haryana High Court in Balbir Singh (supra) and Madhya Pradesh High Court in Madhya Pradesh Bank Karamchari Sangh (supra) castrate sub-clause (bb) of section 2(oo) of the Act. Ratio decidendi in these precedents abrogates statutory provisions of sub-clause (bb) of Section 2(oo) of the Act without even discussing the legality or constitutional validity of the clause. On the other hand the Apex Court in C.M. Venugopal (supra), Morinda Co-operative Sugar Mills Ltd. (supra), Anil Bapurao Kanase (supra), Harmohinder Singh (supra), Batala Coop. Sugar Mills Ltd. (supra), Darbara Singh (supra) and Kishore Chand Samal (supra) and High Court of Delhi in BSES Yamuna Power Ltd. (supra) spoke that case of an employee, appointed for a specific period which was extended from time to time, would be covered by the exception contained in sub-clause (bb) of section 2(oo) of the Act, in case his services are dispensed with as a result of non-renewal of the contract of employment between him and his employer, on its expiry or termination of the contract of employment in terms of a stipulation contained in the contract of employment in that behalf. The law, so laid, holds the water and would be applied to the claimant.

46. Second part of sub-clause (bb) of clause(oo) of section 2 of the Act, refers to termination of contract of employment upon giving notice of certain specified period of time. Generally, contract of employment or in case of statutory corporation or Government undertaking, statutory rules or regulations governing the service provide that service of an employee can be terminated by giving notice of specified period of time by either side or payment in lieu thereof. In some cases, even unilateral provisions to the effect that services of an employee can be terminated at any time without assigning. any reason are inserted, The Apex Court in Deshbandhu Ghosh (1985(1) LLJ 315) construed regulation 34 of West Bengal State Electricity Board Regulations which empowered the Board to terminate services of an employee by giving three months' notice or pay in lieu thereof and ruled that the regulation is violative of Article 14 of the Constitution. The court struck down the regulation and ruled as follows:

> "On the face of it the Regulation is totally arbitrary and confers on the Board a power which is capable of vicious discrimination. It is a naked 'hire and fire' rule, the time for banishing which altogether from employer- employee relationship is fast approaching. Its only parallel is to be found in the Henry VIII clause so familiar to administrative lawyers".

47. In Brojonath Ganguly (1986(2) LLJ 171), the Apex Court struck down rule 9(i) of Service Discipline and Appeal Rules, applicable to employees of Central Inland Water Transport Corporation Ltd., which provide that employment of a permanent employee shall be subject to termination by giving three months' notice by either side or payment of amount equivalent to three months basic pay and dearness allowance in lieu thereof, as violative of Article 16 and 14 of the Constitution, besides being void under section 23 of the Indian Contract Act, as opposed to public policy. In view of grossly unequal position of employer and the employee, the Court discountenanced the agreement of the Corporation that the clause was duly accepted by the employee. In the same manner, In O.P. Bhandari (1986(2) LLJ 509) the Apex Court struck down rule 31 (IV) of IndianTourism Development Corporation, Conduct, Discipline and Appeal Rules, 1978 wherein provisions relating to discharge of an employee from service by giving notice for a specified period of time or salary in lieu thereof were incorporated. Relying the precedent in Deshbandhu

Ghosh (supra), the Court ruled that to uphold such a clause under service rules would amount to accord a magna carta to the authorities invested with these powers to practice uncontrolled discrimination. Observations made by the Court in that regard are reproduced thus:

> "This rule cannot co-exist with Articles 14 and 16 (1) of the Constitution of India. The said rule must therefore die, so that the fundamental rights guaranteed by the aforesaid constitutional provisions remain alive. For, otherwise, the guarantee enshrined in Articles 14 and 16 of the Constitution can be set at naught simply by framing a rule authorizing termination of an employee by merely giving a notice. In order to uphold the validity of the rule in question it will have to be held that the tenure of service of a citizen who takes up employment with the State will depend on the pleasure or whim of the competent authority unguided by any principle or policy. And. that the services of an employee can be terminated, though there is no rational ground for doing so, even arbitrarily or capriciously. To uphold this right is to accord a "magna carta" to the authorities invested with these powers to practice uncontrolled discrimination at their pleasure and caprice on considerations not necessarily based on the welfare of the organization but possibly based on personal likes and dislikes, personal preferences and prejudices".

48. In Delhi Transport Corporation [1991 (1) LLJ 395] law laid in the precedents referred above was reaffirmed by the Apex Court holding that regulation 9(b) of Delhi Transport Corporation, which provided for termination of employment by giving one month's notice or pay in lieu thereof, vested absolute unbridled and arbitrary powers in the employer to terminate services and as such, was violative of the constitutional mandate envisaged in Article 14 of the Constitution. The Court ruled that the Corporation had no powers to make a rule providing for sacking of the permanent employees on unspecified grounds, by merely giving one month's notice or pay in lieu thereof.

49. The Apex Court dealt with legal validity of statutory regulations, framed by the statutory corporations, providing for termination of service of an employee by giving him notice of specified period of time or paying salary in lieu thereof, in the precedents referred above. The Court was not dealing with legal validity of section 2(oo) of the Act. Effect of dicta, in the above precedents, is that any stipulation in a contract of employment, fixing terms of employment or providing for termination of services by giving notice for certain specified period of time or payment of wages in lieu thereof, will be void. In case of public sector undertakings, such stipulation will be violative of guarantee enshrined in Articles 14 and 16 of the Constitution being arbitrary and discriminatory and also being opposed to public policy under Section 23 of the Contract Act. In case of private sector undertakings, such provisions will be void under Section 23 of the Contract Act. Thus, it is evident that the holdings, in the aforesaid precedents therefore castrates second part of sub clause (bb) of clause (oo) of section 2 of the Act.

50. On turning to facts, it is noted that the claimant was appointed as "Pilot B" for a period of five years with effect from 01.08.2011, vide appointment letter EX.WW1/1. The management claims that his services were dispensed with in terms of service conditions contained in appointment letter dated 01.08.2011. As emerge out of the appointment letter EX.WW1/1 claimant was appointed on contractual basis for a period of five years, which contents are extracted thus:

> "1. Contractual appointment
>
> a. Duration
>
> You will be appointed as Pilot B on contractual basis for a period of 5(five) years with effect from 01.08.2011 or from the actual date of resuming flying assignment and will come to an end on 5(five) years or your attaining the age of 60 years, whichever is earlier without any further action or orders by the company.
>
> Be it understood and agreed clearly that due to fluctuating and uncertain nature of contract awarded to the company by its clients, this contractual appointment is purely temporary and for a fixed term only and shall automatically come to an end on the stipulated date as above or on any other earlier date and if communicated to you by the management. Further continuance of the contractual employment would not entitle you any right for regularization in the company".

51. Relating to assessment of performance of the claimant, while in service of the management, stipulation has been made in the appointment letter, which terms are reproduced thus:

> "II. Performance Review/termination of service
>
> Your performance will be reviewed quarterly during the first year of service and if found unsatisfactory, your services are liable to be terminated without any notice.
>
> Thereafter, the company can terminate your contract at any time by giving two months' notice or salary in lieu thereof. In case of resignation, you would be required to give six months' notice subject to the completion of contractual obligation on your part as laid down in the bond as well as relative clause of Civil Aviation Requirement dated 01.09.2005 issued

by the Director General Civil Aviation. In no case there would be any payment in lieu of notice period to waive of the actual notice period for resignation.

52. In his testimony, the claimant does not dispute that he was appointed by the management on 01.08.2011 for a period of five years. However, he agitates that he served the management from 21.03.2009 till 06.06.2012, in order to project that his performance was reviewed by the management from time to time and found him to be a proficient pilot. Shri Aggarwal brought it over the record that the claimant served the management on deputation from 21.03.2009 till 31.05.2011. These facts were not dispelled by the claimant at all. Therefore, it emerged over the record that the claimant served the management on deputation from 21.03.2009 till 31.05.2011. He superannuated from the Army services and then joined the management as Pilot B on contractual basis vide appointment letter Ex.WW1/1. Performance of the claimant, while being on deputation with the management, is not relevant for the period when he was appointed as Pilot B on contractual basis. Even otherwise, term of service contained in appointment letter Ex.WW1/1 were not questioned by the claimant. He accepted terms of his service and put his signatures at Point A on Ex.WW1/1 in token of its acceptance. Out of these facts, it emerged that the claimant was appointed as Pilot B with stipulation that his performance would be reviewed by the management quarterly for the first year and if found unsatisfactory, his services were liable to be terminated without any notice.

53. Stipulation contained in Ex.WW1/1 to the effect that in case of performance of the claimant found to be satisfactory within period of one year, even then his services can be dispensed with by the management by way of giving two months or salary in lieu thereof, cannot withstand the safeguards provided in Article 14 of the Constitution. Such powers cannot be held to be fair and in consonance with principles of natural justice. Evidently, these stipulations are arbitrary and vests the management with right to hire and fire. The management can banish relationship of employer and employee between it and the claimant by merely giving two months' notice or pay in lieu thereof. It is evident that termination of the claimant will depend upon whims or pleasure of the management, unguided by any principle or policy. Ihe management can dispense with services of the claimant on its whims and fancies without disclosing and rational ground for doing so. Relying law laid by the Apex Court, referred above, it is concluded that the above stipulations are violative of Article 14 and 16 of the Constitution, besides being void under section 23 of the Contract Act. Resultantly, it is concluded that the right vesting in the management to terminate contract of employment of the claimant by way of giving two months' notice or salary in lieu thereof is void. Stipulation, as referred above, is hereby, brushed aside.

54. Whether stipulation to the effect that the management was to review performance of the claimant quarterly during the first year of service and if found unsatisfactory, his services were liable to be terminated without any notice, is in consonance with law? For an answer to this proposition, it is to be taken note of that an employer has right to assess fitness of an employee to the post. Concept of fitness to the post includes three main ingredients, viz. performance or productivity, discipline or conduct and attendance. Employer has right to put an employee on trial when he has been employed provisionally to fill a permanent vacancy. Obviously, purpose of putting him on trial is to find out his suitability of holding the post substantially or permanently and thereafter he gets a right to hold the post. Fitness or suitability is to be judged at the time of his confirmation and not unless any specific rule or term of contract of service so provides, as on the date of his original appointment. If an employee is found to be unsuitable, either during the period when he was put on trial or on completion of the said period, he is not to be retained in service. Main essence of the concept of putting a person on trial is to judge his suitability for a regular appointment on the post. He is liable to be discharged on being found to be unsuitable for absorption on the post. Testing of a person's capacity, conduct or character empowers an employer to watch the employee for a particular period and the employee has to prove his worth to become eligible for that post in substantive capacity. Stipulation, relating to review of performance of the claimant during the first year of his service, in his appointment letter Ex.WW1/1, makes it apparent that he was put on probation for that period.

55. Whether discharge of services of the claimant during first year of service can be held to be within the rights of the management? As projected above, claimant was appointed on 01.08.2011 and his performance was to be reviewed quarterly for first year of his service. The management was competent to review his service on 30.11.2011, 29.02.2012, 31.05.2012 and 31.08.2012. Services of the claimant were dispensed with on 01.06.2012 on the strength of termination letter, proved as EX.WW1/6. Thus, obviously his performance was reviewed by the management for three quarters. His services were dispensed with at the end of third quarter, without permitting him to prove his worth in forth quarter of the year.

56. The principle of law relating to discharge under contract and discharge simpliciter were extended to the discharge of probationer by the Supreme Court in Express Newspaper Ltd. [1964 (I) LLJ 9]. Facts of the case were that a journalist was appointed on probation for a period of 6 months and was to be confirmed on being found suitable for the job. Before the expiry of period of probation the employer terminated his services on the ground that his

work was not satisfactory. The journalist challenged his discharge on the ground that it was mala fide and unfair labour practice on the part of the employer. The employer pleaded that the journalist was appointed on probation, hence termination of his service on account of unsatisfactory work was well within rights. The Apex Court recognized the right of the employer ot terminate service of a probationer at the end of the period of probation. The observations made by the Apex Courts are extracted thus:

> "there can, in our opinion be no doubt about the position in law that an employee appointed on probation for 6 months continues as probationer even after the period of 6 months if at the end of the period his services had either not been terminated or he is confirmed. It appears clear to us that without anything more an appointment on probation for 6 months give the employer no right to terminate the service of an employee before 6 months had expired except on the ground of misconduct or other sufficient reasons in which case even the service of a permanent employee could be terminated. At the end of the 6 months period the employer can either confirm him or terminate his services because his performance is found unsatisfactory. If no action is taken by the employer either by way of confirmation or by way of termination the employee continues to be in service as a probationer".

57. The distinction was maintained by the Apex Court between cases of termination of employment of a probationer before period of probation had expired and the cases where the employer exercise his inherent right either to confirm or to terminate the employment of the probationer at the end of the period of probation. When an employee appointed on probation for a specific period is allowed to continue in the post after the expiry of that period without any specific order of confirmation, he continues in his post as a probationer only and acquires no substantive right to the post in the absence of any stipulation to the contrary in the original order of appointment or service rules. When an employee is allowed to continue after end of period of probation, necessary implication would follow that his period of probation has been extended and it cannot be concluded that he should be deemed to have been confirmed. Law to this effect was laid by the Apex Court in Dharam Singh (AIR 1968 SC 1210). Consequently it is clear that an express order of confirmation is necessary to give an employee substantive right to the post and from the mere fact that he is allowed to continue in the post after the end of period of probation, it is not possible to hold that he should be deemed to have been confirmed. In unit Trust of India (1993 (I) LLJ 240) the Apex Court announced that the vary purpose of putting a person on probation is to watch his performance.

58. Whether assessment made by the employer about suitability of the employee can be weighed by an Industrial Adjudicator ? It is a settled proposition that assessment to the effect that service of a probationer is satisfactory or not rests with the satisfaction of the employer. Such satisfaction could be objectively assessed and employer is not bound to give any reason when he does not confirm a probationer on expiry of the period of probation. However the industrial adjudication may call upon the employer to put reason for not confirming an employee when he finds the order laced with mala fide. In Upkar Machinery Ltd., (1996 (1) LLJ 398) the Apex Court ruled that when validity of termination of services, during period of probation without notice and without assigning any reason, is under challenge in that situation Industrial Adjudicator would be competent to find out whether the order of termination was bona fide exercise of power conferred by the contract. In Brook Bond India (Pvt.) Ltd., (1993 (11) LLJ 454) workman was appointed in the first instance for a period of six months, extendable for a further period of three months or more in absolute discretion of the employer. The terms of appointment further provided that the employer had a right to terminate the services of a probationer, "during the period of probation or extended period of probation or before confirmation in writing, without notice and without assigning reasons whatsoever." Service was terminated within the period of probation. During the course of adjudication the employer adduced no evidence to show that the work of probationer was unsatisfactory. The Apex Court ruled that the order of terminating the service of a probationer was capricious and unreasonable. The termination was held to be not justified. The above precedents make it is clear that an Industrial Adjudicator has a right to see whether the order of termination is mala fide or whether it amounts to victimization or unfair labour practice.

59. As unfolded by Shri Sanjiv Aggarwal, claimant was involved in a helicopter crash, which occurred on 15.01.2012. He was pilot in-charge of the said helicopter, which met with an accident. In that accident, the co-pilot sustained spinal fracture injuries, while other three crew members sustained minor injuries. Pursuant to the said accident, claimant was asked to undergo refresher training from 13.02.2012 to 15.02.2012, which was followed by a test. Since performance of the claimant was found to be unsatisfactory, he did not qualify the test. He was asked to undergo test on 13.03.2012 *vide* letter dated 02.03.2012, proved as Ex.MW1/1. Claimant did not appear in the retest, without any information or permission from the management. Facts unfolded by Shri Aggarwal are not disputed in that regard. Claimant tried to agitate that his test conducted in the year 2009 was valid for a period of five year and there was no occasion for the management to call the claimant to undergo retest. Therefore, out of facts

unfolded by the parties, it is emerging that on account of helicopter crash, claimant was called upon to undergo refresher training, followed by a test. When he failed to perform satisfactorily in the test, he was ordered to undergo retest, which command he opted not to obey.

60. Services of the claimant were dispersed with *vide* termination letter, proved as Ex.WW1/6. As detailed therein, his services were terminated in terms of clause No.i (inadvertently that clause has been mentioned as clause No.iii) of appointment letter dated 01.08.2011. For sake of convenience, contents of termination letter are reproduced thus:

> "This has reference to show-cause notice No. PHHL/NR/P&A/20293/1294 dated 09.04.2012 issued to you and your reply thereto *vide* your letter dated 13.04.2012. The explanation submitted by you has been perused and is found to be unsatisfactory and keeping in view your past performance, license status and the flying need of the company, your services are no longer required and your contract of employment is hereby terminated with immediate effect in terms of Clause No.(i) Performance Review/ Termination of Service) of your appointment letter No. PHHL/CO/PERS/1268/B/498 dated 01.08.2011. You are liable for payment of Service Bond amount of Rs.25 lakh in terms of Clause No.9 of Service Agreement dated 1st August, 2011 executed by you along with your sureties.
>
> You may collect your dues including two months notice pay from F&A department of NR during working hours after payment of bond money."

61. As projected in Ex.WW1/6, the management took note of show-cause notice served upon the claimant, his reply thereto and recorded opinion that reply was unsatisfactory. Thereafter, the management took into consideration past performance, license status and flying need and concluded that services of the claimant were no longer required. One may take note of the facts that the management highlights that show-cause notice was served, which not satisfactorily replied by the claimant. Show-cause notice EX.WW1/9 makes it apparent that when claimant opted not to undergo re-test that act was taken as willful disobedience of official orders, besides being subversive of discipline or good behavior. Claimant was made known that the said act may require stringent disciplinary action, including termination of his contract, in case his explanation was to be found unsatisfactory. As emerge out of the termination order, explanation offered by the claimant, was held not to be satisfactory. Therefore, one may venture to ascertain as to whether terminology used in the termination letter casts a stigma on the claimant. As projected above, termination order though appears to be innocuous yet was made in the backgrounds of acts of misconduct, allegedly committed by the claimant. Contents of termination order visits the claimant with evil consequences, since it is mentioned therein that his reply to the show-cause notice was found not to be satisfactory. When gauged in show-cause notice Ex.WW1/4, insinuation of disobeying official orders were levelled against the claimant, which acts were held to be subversive of discipline and good behavior. Obviously his termination order seems to be order of dismissal for the misconduct, detained in show-cause notice Ex.WW1/4. Therefore, it is obvious that the termination order, though counched in innocuous words, casts stigma on the claimant. Resultantly it is concluded that the termination order is not a discharge simpliciter, but an order of dismissal for the misconduct.

62. No charge sheet was served on the claimant for the misconduct for which his services were dispensed with. No enquiry was conducted in the matter. As brought over the record by Shri Aggarwal, only show-cause notice was served on him, which is Ex.WW1/4. Though reply was submitted which is Ex.WW1/5, yet it was held to be unsatisfactory. Thus it is evident that no opportunity of being heard was granted to the claimant when his services were dispensed with by the management. Evidently, this is a case of no enquiry. In such a situation, termination order is held not to be fair and legal. It cannot be said that services of the claimant were dispensed with in accordance with principles of natural justice. In view of these facts, order of termination cannot be held to be by way of punishment for a proved misconduct. Action of the management. cannot be held to be saved in main part of the definition of the term retrenchment, contained in section 2(oo) of the Act. Resultantly, it is concluded that action of the management is retrenchment within the meaning of section 2(oo) of the Act. Issue is therefore, answered in favour of the claimant and against the management.

Issue No. 3

63. Four standards were delineated by the Labour Appellate Tribunal in Buckingham & Carnatic Company Limited (1952 L.A.C. 490) to render managerial right of taking disciplinary action vulnerable, namely, (i) where there is a want of bona fides or (ii) when it is a case of victimization or unfair labour practice or violation of the principles of natural justice, or (iii) when there is basic error of facts, or (iv) when there has been a perverse finding on the materials. This articulation was adopted by the Apex Court with slight modification in Indian Iron and Steel Company Limited (1958(1) LLJ 260), without any acknowledgement to the precedent in Buckingham & Carnatic case (supra), wherein it was ruled that the power of the management to direct its own internal administration and discipline was not unlimited and liable to be interfered with by industrial adjudication when a dispute arises to see whether termination of services

of a workman is justified and to give appropriate relief. However, it was announced that the jurisdiction of an Industrial Tribunal to interfere with the managerial prerogative of taking disciplinary action is not of appellate nature as the legislature has not chosen to confer such jurisdiction upon it. Hence Tribunal could not substitute its own judgement for that of the management. The Court laid down that in the following circumstances an industrial adjudicator can interfere with the disciplinary action taken by the employer: (1) when there is want of good faith, (2) when there was victimization or unfair labour practice, (3) when the management had been guilty of a basic error or violation of the principles of natural justice, or (4) when on the materials, the finding was completely baseless or perverse.

64. Enunciation (1) and (2), referred above, are addressed to the bona fides of the employer in initiating the action and inflicting the punishment, while postulates (3) and (4) are addressed to domestic enquiry. Therefore, an employer is required to act bona-fide in initiating disciplinary action as well as in inflicting the punishment. In initiating the action, the alleged act of misconduct shouid not be a ruse for something else, such as the trade union activities of the workman or employers dislike of him for some personal reasons. The action should not be motivated by vindictiveness or ulterior purpose, so as to smack for victimization or unfair labour practice. Likewise in the matter of inflicting punishment, the employer should act fairly. In case punishment awarded is so shockingly disproportionate to the act of the misconduct, as no reasonable man would ever impose that "itself may lead to an inference of rnalafides, victimization or unfair labour practice. In holding enquiry, the Enquiry Officer must comply with the rules of natural justice. He must not be a biased person and give reasonable opportunity to both sides for being heard. His findings should not be baseless or perverse

65. In Ramswarth Sinha (1954 L.A.C. 697) the Labour Appellate Tribunal recognized the right of the management to ask for permission to adduce evidence before the Tribunal to justify its action in a "no enquiry" case. Following that proposition the Apex Court equated the cases of "defective enquiry" with "no enquiry" cases and ruled that in either cases, the Tribunal have jurisdiction to go into the merits of the case on the basis of evidence adduced before it by the parties. Reference can be made to the precedent in Motipur Sugar Factory Pvt. Ltd. [1965(2) LLJ 162] where the employer had held no enquiry at all before the dismissal and, therefore, adduced evidence to justify its action before the Tribunal, which decision was upheld. The Apex Court discarded the plea on behalf of the workman that since no enquiry at all had been held by the employer, it had no right to adduce evidence to justify its stand before the Tribunal. In Ritz Theatre [1962 (11) LLJ 498] it was ruled by the Supreme Court that the Tribunal would be justified to go to the merits of the case and decide for itself on the basis of the evidence adduced whether the charges have indeed been made out. It announced that it would neither be fair to the management nor fair to the workman himself in such a case that the Tribunal should refuse to take the evidence and thereby drive the management to pass through the whole process of holding the enquiry all over again. Reference can also be made to the Precedent in Bharat Sugar Mills Ltd. [1961 (11) LLJ 644].

66. In Delhi Cloth and General Mills Company [1972 (1) LLJ 180], Apex Court considered the catena of decisions over the subject and laid down the following principles :

"(1) If no domestic enquiry had been held by the management, or if the management makes it clear that it does not rely upon any domestic enquiry that may have been held by it, it is entitled to straightaway adduce evidence before the Tribunal justifying its action. The Tribunal is bound to consider that evidence so adduced before it, on merits, and give a decision thereon. In such a case, it is not necessary for the Tribunal to consider the validity of the domestic enquiry as the employer himself does not rely on it.

(2) If a domestic enquiry had been held, it is open to the management to rely upon the domestic enquiry held by it, in the first instance, and alternatively and without prejudice to its plea that the enquiry is proper and binding, simultaneously adduce additional evidence before the Tribunal justifying its action. In such a case no inference can be drawn, without anything more, that the management has given up the enquiry conducted by it.

(3) When the management relies on the enquiry conducted by it, and also simultaneously adduces evidence before the Tribunal, without prejudice to its plea that the enquiry proceedings are proper, it is the duty of the Tribunal, in the first instance, to consider whether the enquiry proceedings conducted by the management, are valid and proper. If the Tribunal is satisfied that the enquiry proceedings have been held properly and are valid, the question of considering the evidence adduced before it on merits, no longer survives. It is only when the holds that the enquiry proceedings have not been properly held, that it derives jurisdiction to deal with the merits of the dispute and in such a case it has to consider the evidence adduced before it by the management and decide the matter on the basis of such evidence.

(4) When the domestic enquiry has been held by the management and the management relies on the same, it is open to the latter to request the Tribunal to try

the validity of the domestic enquiry as a preliminary issue and also ask for an opportunity to adduce evidence before the Tribunal, if the finding on the preliminary issue is against the management. However, elaborate and cumbersome the procedure may be, under such circumstances, it is open to the Tribunal to deal, in the first instance, as a preliminary issue the validity of the domestic enquiry. If its finding on the preliminary issue is in favour of the management, then no additional evidence need be cited by the management. But, if the finding on the preliminary issue is against the management, the Tribunal will have to give the employer an opportunity to cite additional evidence and also give a similar opportunity to the employee to lead evidence contra, as the request to adduce evidence had been made by the management to the Tribunal during the course of the proceedings and before the trial has come to an end. When the preliminary issue is decided against the management and the latter leads evidence before the Tribunal, the position, under such circumstances, will be, that the management is deprived of the benefit of having the finding of the domestic tribunal being accepted as prima facie proof of the alleged misconduct. On the other hand, the management will have to prove, by adducing proper evidence, that the workman is guilty of misconduct and that the action taken by it is proper. It will not be just and fair either to the management or to the workman that the Tribunal should refuse to take evidence and thereby ask the management to take a further application, after holding a proper enquiry, and deprive the workman of the benefit of the Tribunal itself being satisfied, on evidence adduced before it, that he was or was not guilty of the alleged misconduct.

(5) The management has got a right to attempt to sustain its order by adducing independent evidence before the Tribunal. But the management should avail itself of the said opportunity by making a suitable request to the Tribunal before the proceedings are closed. If no such opportunity has been available of, or asked for by the management, before the proceedings are closed, the employer can make no grievance that the Tribunal did not provide such an opportunity. The Tribunal will have before it only the enquiry proceedings and it has to decide whether the proceedings have been held properly and the findings recorded therein are also proper. :

(6) If the employer relies only on the domestic enquiry and does not simultaneously lead additional evidence or ask for an opportunity during the pendancy of the proceedings to adduce such evidence, the duty of the Tribunal is only to consider the validity of the domestic enquiry as well as the finding recorded therein and decide the matter. If the Tribunal decides that the domestic enquiry has not been held properly, it is not its function to invite suomoto the employer to adduce evidence before it to justify the action taken by it.

(7) The above principles apply to the proceedings before the Tribunal, which have come before it either on a reference under Section 10 or by way of an application under Section 33 of the Industrial Disputes Act, 1947.

67. Keeping in view the proposition laid by the Apex Court in Delhi Cloth and General Mills Company (supra), the Parliament inserted section 11-A in the Act, which came into force w.e.f. 15th cf December, 1971. In the statement of objects and reasons for inserting section 11-A, it was stated :

"In Indian Iron and Steel Company Limited and Another Vs. Their Workmen (AIR 1958 S.C. 130 at p.138) , the Supreme Court, while considering the Tribunal's power to interfere with the management's decision to dismiss, discharge or terminate the services of a workman, has observed that in case of dismissal on misconduct, the Tribunal does not act as a court of appeal and substitute its own judgment for that of the management and that the Tribunal will interfere only when there is want of good faith, victimization , unfair labour practice, etc., on the part of the management.

2. The International Labour Organization, in its recommendation (No.119) concerning Termination of employment at the initiative of the employer' adopted in June 1963, has recommended that a worker aggrieved by the termination of his employment should be entitled to appeal against the termination among others, to a neutral body such as an arbitrator, a court, an arbitration committee or a similar body and that the neutral body concerned should be empowered to examine the reasons given in the termination of employment and the other circumstances relating to the case and to render a decision on the justification of the termination. The International Labour Organization has further recommended that the neutral body should be empowered (if it finds that the termination of employment was unjustified) to order that the worker concerned, unless reinstated with unpaid wages, should be paid adequate compensation or afforded some other relief.

3. In accordance with these recommendations , it is considered that the Tribunal's power in an adjudication proceeding relating to discharge or dismissal of a workman should not be limited and that the Tribunal should have the power, in cases wherever necessary to set aside the order of discharge or dismissal and direct reinstatement of

the workman on such terms and conditions, if any, as it thinks fit or give such other reliefs to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require. For this purpose, a new section 11-A is proposed to be inserted in the Industrial Disputes Act, 1947 .....".

68. After insertion of section 11-A , the Apex Court summed up the law in the case of Firestone Tyre and Rubber Company [1973 (1) LLJ 278] in the following propositions:

"(1) The right to take disciplinary action and to decide upon the quantum of punishment are mainly managerial functions, but if a dispute is referred to a Tribunal, the latter has power to see if action of the employer is justified.

(2) Before imposing the punishment, as employer is expected to conduct a proper enquiry in accordance with the provisions of the Standing Orders, if applicable, and principles of natural justice. The enquiry should not be an empty formality.

(3) When a proper enquiry has been held by an employer, and the finding of misconduct is a plausible conclusion flowing from the evidence, adduced at the said enquiry, the Tribunal has no jurisdiction to sit in judgement over the decision of the employer as an appellate body. The interference with the decision of the employer will be justified only when the findings arrived at in the enquiry are perverse or the management is guilty of victimization, unfair labour practice or mala fide.

(4) Even if no enquiry has been held by an employer or if the enquiry held by him is found to be defective, the Tribunal in order to satisfy itself about the legality and validity of the order, had to give an opportunity to the employer and employee to adduce evidence before it. It is open to the employer to adduce evidence for the first time justifying his action, and it is open to the employee to adduce evidence contra.

(5) The effect of an employer not holding an enquiry is that the Tribunal would not have to consider only whether there was a prima facie case. On the other hand, the issue about the merits of the impugned order of dismissal or discharge is at large before the Tribunal and the latter, on the evidence adduced before it, has to decide for itself whether the misconduct alleged is proved. In such cases, the point about the exercise of managerial functions does not arise at all. A case of defective enquiry stands on the same footing as no enquiry.

(6) The Tribunal gets jurisdiction to consider the evidence placed before it for the first time in justification of the action taken only, if no enquiry has been held or after the enquiry conducted by an employer is found to be defective.

(7) It has never been recognized that the Tribunal should straightaway, without anything more, direct reinstatement of a dismissed or discharged employee, once it is found that no domestic enquiry has been held or the said enquiry is found to be defective.

(8) An employer, who wants to avail himself of the opportunity of adducing evidence for the first time before the Tribunal to justify his action, should ask for it at the appropriate stage. If such an opportunity is asked for, the Tribunal has no power to refuse. The giving of an opportunity to an employer to adduce evidence for the first time before the Tribunal is in the interest of both the management and the employee and to enable the Tribunal itself to be satisfied about the alleged misconduct.

(9) Once the misconduct is proved either in the enquiry conducted by an employer or by the evidence placed before a Tribunal for the first time, punishment imposed cannot, be interfered with by the Tribunal except in cases where the punishment is so harsh as to suggest victimization.

(10) In a particular case, after setting aside the order of dismissal, whether a workman should be reinstated or paid compensation is, as held by this Court in The Management of Panitole Tea Estate Vs. The workmen, within the judicial decision of a Labour Court or Tribunal."

69. In Mahatta [2012(133) FLR 418], the High Court of Delhi dealt with a series of decision on the topic and ruled that an industrial adjudicator, upon completion of pleadings, is required to proceed with the adjudication in the following manner:

(a) To examine whether the domestic enquiry preceding the punishment is pleaded to have been held and documents in support thereof filed.

(b) If the domestic enquiry is pleaded and the documents in support thereof filed, and the workman has challenged the validity of the said domestic enquiry, to determine whether such challenge is on any factual or purely legal grounds and frame issues on the same.

(c) However, if domestic enquiry is not pleaded or if pleaded but no documents in support thereof filed, the question of framing any issue as to domestic inquiry does not arise

(d) If an issue as aforesaid to the domestic inquiry has been framed and the employer has also sought opportunity to in the alternative establish misconduct

before the Industrial Adjudicator, to frame issue thereon also, simultaneously with framing issues on validity of inquiry.

(e) To, after hearing the parties consider whether in the facts of the present case any prejudice (other than as above) is likely to be caused to either of the parties if evidence on both sets of issues is led together. Only on finding, by a reasoned order, a case of such prejudice or any other reason, is the trial to be bifurcated into two states. Else, the parties to be directed to lead evidence on both sets of issues together.

(f) To, if the evidence on both sets of issues has been recorded together, to first consider the evidence only on the aspect of validity of the inquiry and without being influenced in any manner whatsoever by the depositions of the witnesses on the merits of the dispute, i.e. misconduct with which the workman was charged with. If the enquiry is found to be vitiated and a finding in that regard is returned, the Industrial Adjudicator may then proceed to adjudicate on the basis of evidence in that respect, whether misconduct has been established or not.

(g) The Industrial Adjudicator to, on case to case basis, decide whether the arguments on both aspects are to be heard together or at different stages. However, as aforesaid an endeavour is to be made to record the evidence of the witness on both issues in one go only.

70. As noted above, it was a case of no enquiry. Evidence was produced by the management before this Tribunal to prove charges against the claimant. In order to prove misconduct of the claimant, the management projects that when claimant was involved in helicopter crash on 15.01.2012, entire fleet of Dhruv helicopter was grounded. Claimant was ordered to undergo refresher training from 13.02.2012 to 15.02.2012 followed by a test. Claimant took the test but Could not perform satisfactorily. He was ordered to undergo retest, vide command contained in Ex.MW1/1. The said command was not obeyed and show-cause notice EX.WW1/4 was served. Explanation offered by the claimant through Ex.WW1/5 was held to be unsatisfactory. As contained in Ex.WW1/5, claimant nowhere projects facts to offer explanation as to why he had not undergone retest despite command given in EX.MW1/1. In order to appreciate justification of the command of retest given to the claimant, guidelines issued by the Director General, Civil Aviation, are to be looked in to. Civil Aviation Requirements, effective from 30.11.2006 highlights that recurrent training of pilot at periodical intervals is imperative and necessary to ensure standards. The management was to ensure proficiency of pilots on the type of helicopter (twin engine) and his role as pilot in command and to monitor him periodically to upgrade his skill and knowledge as a pilot so that he acquires and maintains competency in his duties. When he crashed the helicopter, the management called upon the claimant to undergo refresher training pursuant to Civil Aviation Requirements, referred above. He opted to undergo refresher training and test but could not come out successfully. Hence, he was ordered to undergo retest, which directions he failed to follow. Thus, it is evident that the claimant had not undertaken retest and committed misconduct of disobeying lawful orders of his employer. Orders given to the claimant were to upgrade skill and efficiency to work as pilot in-charge. Instead of upgrading his efficiency and skill, he violates lawful orders. which act is subversive of discipline or good behaviour. Evidently, gross-misconduct was committed by the claimant, which has been proved to the hilt.

71. Shri Sanjiv Aggarwal deposed that the claimant was involved in a helicopter accident wherein co-pilot sustained spinal fracture injuries while other three crew members sustained minor injuries. Clamant was pilot in charge of the ill-fated helicopter. Thus, out of facts unfolded by Shri Aggarwal, it emerged that the management projects that on account of errors of the claimant, said accident occurred. The claimant attempts to dispel facts testified by Shri Aggarwal. However, the situation is otherwise as noticed by the Enquiry Committee, appointed by the Ministry of Civil Aviation, Government of India, New Delhi. Enquiry Committee, it its report dated 22.04.2013, ruled that the helicopter was airworthy. For sake of convenience, findings of the Enquiry Committee are extracted thus:

"2.1 **Airworthiness of Helicopter**

2.1.1 Maintenance of the helicopter : The Certificate of Airworthiness of the helicopter was current and valid. Periodicity of all scheduled maintenance tasks was maintained. The helicopter was under the maintenance of an approved maintenance organization. AME who carried out daily inspection on the day of the accident, is appropriately licensed for the maintenance of this type of helicopter. He did not observe any snag or abnormality during his inspection. Engine power assurance check was being carried out at intervals specified by the manufacturer (i.e. at 25 hours and no anomaly was observed.

2.1.2 System/component Failure: the helicopter had snag related to tail rotor and main rotor on numerous occasions and they were rectified as per the procedure. TR imbalance was also reported twice within a span of one month after major inspection of 250 hours on 16.11.2011. On being referred, HAL recommended repainting of TR blades to address paint peel off that was opined to have been caused by sand/dust in the operating environment. Painting of the blades was carried out under the supervision of HAL engineer, holding authorization for the scope

of work issued by QM HAL. TR assembly was installed after painting and rigging check was carried out on TR flight controls. Helicopter was offered for dynamic balancing of TR on 15.01.2012, comprising ground and flight regimes.

- No snag or abnormality was observed by the AME during his pre-flight inspection. After satisfactory check in the ground regime, the helicopter was released for vibration assessment in the flight regime. After about four minutes of the flight, the helicopter entered into uncontrolled and rapid descent and thus impacted the ground.
- After the accident detailed inspection of helicopter and its system was carried and no defect was observed, damages observed were post impact.
- To assess any failure related to the power system, the ECU date from the ECU of both the engines were down loaded and no discrepancy was observed. DFDR data also did not indicate any engine related discrepancies.
- Integrity of transmission system was checked and found satisfactory.
- To assess any defect related to Auto Flight Control System (AFCC) which could have led to possible loss of control, both the AFCC were checked at the facility of HAL at Bangalore. No discrepancy was observed.
- During the descent, collective pitch lever was vigorously used by the crew to arrest the rapid rate of descent. However the descent could not be arrested. To obviate malfunction/failure of the CPA, the component was checked at the HAL facility and no discrepancy was observed.
- The helicopter was maintained as per the approved maintenance programme. No snag was reported before the accidental flight.

Thus, it can be safely concluded that the helicopter was in airworthy condition to undertake the flight."

72. The Committee conducted an investigations to draw lessons from the accident in order to prevent future accidents. To assess facts, so that in future lessons may be learnt, the Committee went on to ascertain as to whether there was any human error involved in the accident. The committee ruled that the accident was result of situational unawareness of the pilot in command. For sake of convenience, report of the Committee In that regard IS extracted thus:

"2.5 Piloting and Handling of Emergency

2.5.1 On the day of accident, the helicopter was checked for vibrations on ground and then flown for OGE hover check. The helicopter was 'Picked Up' and power used was read out by the PlC, without stabilizing the hover. Collective setting being greater than the IGE requirement, the helicopter continued to gain height. Further increment resulted in appreciable increase in Q (22.12% in excess of OGE hover requirement) and ROC (438 feet/min). Higher power settings were maintained despite Co-pilot's advisories on height attained from 90 feet onwards and H.HT mode was engaged at 105 feet, without stabilizing the helicopter. In the duration that AFCS could stabilize and bring the helicopter to the reference height, it had exceeded permissible deviation of 30 feet, resulting in un-commanded disengagement of H.HT. Consequent illumination of AFCS annunciator and MW light was seen but the situation was not comprehended. No effort was made to analyze the cause and the PlC perceived it as AFCS malfunction. The helicopter continued to climb thereafter until Pilot's next advisory. Further ascend was stopped for about half minute but was resumed thereafter, during the ensuing spot turn. The turn was intended to assess winds, to align the helicopter into wind for minimizing vibrations. The turn was unnecessary as winds could have been assessed on EHSI and wind vector indication.

2.5.2 OGE hover in this helicopter variant is carried out visually and requires alertness to appreciate vertical movement, especially at higher heights. H.HT reduces the work load and its disengagement worsened the situation. Execution of a spot turn added to the pilot's work load. The pilot remained focused in position keeping and missed out on height maintenance, revealing inappropriate scanning of flight instruments.

2.5.3 Near continuous gain in height reveals inadequate co-relation of power utilization vis-a-vis calculation based requirements for IGE as well as OGE hover.

2.5.4 Pilot's initial attempt for descent did not did not consummate as the helicopter had been in a state of climb and reduction in power settings was not sufficient for commencing a descent. After waiting for about six seconds, he lowered the collective further. Reduction was excessive and the helicopter began to descend rapidly, resulting in ingress into vortex ring regime. The crew displayed poor Situational Awareness in not appreciating high ROD in low power setting descent at zero forward speed. Onset of the Vortex Ring was not recognized, thus requisite action could not be initiated. Dhruv FRC(checklist) mentions following indications and recovery actions for Vortex Ring :

- Indications
- Uncontrolled vertical descent at speed close to zero
- Increase in vibrations with random pitching and rolling
- Actions
- Collective: Maintain approximately at hover setting
- Cyclic: Forward to lower attitude by 10 deg. to 15 deg.
- As speed builds to 60 KIAS: Raise attitude and arrest descent

2.6 Cockpit Resource Management

2.6.1 CVR analyses reveals lack of effective CRM. The Co-pilot did not assist the pilot during the initial hover but had tried to render assistance in establishing the hover by calling out heights from 90 feet onwards up to the intended hover height of 105 ft. RH. Later, he had urged the pilot to stop (the climb) at 215 ft. and again informed the pilot of the height at 500 ft. The Co-pilot however lacked the requisite assertiveness.

2.6.2 The PlC had continued with the sortie profile without attempting to analyze or discuss the cause for activation of MW light. This was despite AME's availability on board on Dhruv.

2.6.3 During the descent, the Co-pilot did not caution. the PlC of high descent rate and hazards associated with such a condition. This was despite the fact that there was no adverse Trans-Cockpit Authority Gradient (TAG). The two Pilots had comparable number of flying hours and in addition, the Co-pilot was a qualified Captain on type and had also flown modern generation helicopter (Bell 407) prior to Dhruv conversion.

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3.1 Findings

3.1.1 On 15th January 2012, Dhruv helicopter VT-BSN undertook a flight from Raipur aerodrome for Vibrex Check at 0653 UTC after filing a VFR flight plan. The exercise entailed checking of TR vibrations in OGE hover and forward flight regimes. The PlC initiated a hover and continued uninterrupted ascent for OGE hover. At about 105 ft, he engaged H. HT hold which went 'OFF' un-commanded. This was indicated by illumination of AFCS annunciator on CWP, followed by activation of MW caption. The helicopter continued to ascend and attained an approximate height of 800 feet AGL. A descent was initiated thereafter to get down for establishing forward flight. Excessive lowering of collective pitch during vertical descent led to high ROD and onset of Vortex Ring condition. Collective Pitch was raised to arrest the sink which led to lntensification of vortices and further increase in sink rate. Subsequent reduction in power did not help in reducing or controlling the sink. The helicopter continued to lose height rapidly and as the ground came closer, the PlC raised the collective to maximum possible extent. The helicopter impacted ground at 06:57 UTC. It bounced upwards after the initial impact and settled back on the runway after rotating approximately 360 degrees.

3.1.2 Crash services were promptly activated and occupants were evacuated.

3.1.3 There was no fire.

3.1.4 No failure or abnormality was found in any of the helicopter systems.

3.1.5 Flight Crew's speculated malfunction of AFCS or PCA is ruled out.

3.1.6 Inadequate systems' knowledge and previous vibration history contributed in obscuring Flight Crew's Situational Awareness and mis- judgement of the emergency.

3.1.7 Flight planning for the flight was inadequate.

3.1.8 The CRM was sub-optimal. Lack of all-inclusive utilization of available aircraft resources and limited contribution by Co-pilot during critical phase of flight precipitated the emergent situation.

3.1.9 Training imparted by the manufacturer was found inadequate considering PlC's lack of previous experience in multi engine/1FR capable helicopter.

3.1.10 The pilots were not scheduled for simulate or training by the company despite availability of type simulator since May 2010.

3.1.11 Opportunities accorded to pilots for consolidation were found to be lacking as quantum of flying undertaken by Dhruv fleet had been low.

3.1.12 Flying syllabus followed for conversion by HAL was as per DGCA CAR. The conversion and consolidation training is found inadequate in the instant case considering break in flying, previous experience and individual capabilities. Substantial number of pilots with only single engine helicopter and limited IFR exposure were inducted in the company.

3.2 Probable Causes and Contributing Factors

The accident is attributed to loss of Situational Awareness by the PlC wherein he allowed the helicopter to enter Vortex Ring state during vertical descent. High rate of descent in low power settings had led to onset of the phenomenon. The Flight Crew failed to recognize the condition, therefore, stipulated recovery actions were not initiated. Instead, the PlC attempted to arrest the descent by raising Collective lever which aggravated the situation. Crew's fixation to vibrations' history of this helicopter and other speculated failures contributed towards misjudgment

of the situation. Limited experience on type and inadequate knowledqe of the helicopter systems also contributed towards the accident."

73. As is evident, helicopter accident, referred above, occurred due to loss of situational awareness by the claimant. He could not attempt to arrest descend by using capabilities. His failure to handle the helicopter resulted in the accident wherein the chopper was completely damaged, the Co-pilot sustained spinal fracture injuries and three crew members sustained minor injuries. Thus it is evident that the claimant lacked proficiency and skill, hence could not exercise efficiency and control while flying Dhruv Advanced Light Helicopter VT-BSN, which met with an accident on 15.01.2012. Inefficiency of the claimant led to this disaster. The management has been able to prove case of gross misconduct on the part of the claimant.

74. Right of an employer to inflict punishment of discharge or dismissal can not be held to be unfattered. The punishment imposed must commensurate with gravity of the misconduct, proved against the delinquent workman. Prior to enactment of Section 11-A of the Act it was not open to the industrial adjudicator to vary the order of punishment on finding that the order of dismissal was too severe and was not commensurative with the act of misconduct. In other words, the industrial adjudicator could not interfere with the punishment as it was not required to consider propriety or adequacy of punishment or whether it was excessive or too severe. Apex Court, in this connection, had, however, laid down in Bengal Bhatdee Coal Company [1963 (I) LLJ 291] that where order of punishment was shockingly disproportionate with the act of the misconduct which no reasonable employer would impose in like circumstances, that itself would lead to the inference of victimization or unfair labour practice which would vitiate order of dismissal or discharge. But by enacting the provisions of Section 11-A of the Act, the Legislature has transferred the discretion of the employer, in imposing punishment, to the industrial adjudicator. It is now the satisfaction of the industrial adjudicator to finally decide the quantum of punishment for proved acts of misconduct, in cases of discharge or dismissal. If the Tribunal is satisfied that the order of discharge or dismissal is not justified in any circumstances on the facts of a case, it has the power not only to set aside order of punishment and direct reinstatement with back wages, but it has also the power to impose certain conditions as it may deem fit and also to give relief to the workman, including award of lesser punishment in lieu of discharge or dismissal.

75. It is established law that imposing punishment for a proved act of misconduct is a matter for the punishing authority to decide and normally it should not be interfered with by the Industrial Tribunals. The Tribunal is not required to consider the propriety or adequacy of punishment. But where the punishment is shockingly disproportionate, regard being had to the particular conduct and past record, or is such as no reasonable employer would ever impose in like circumstance, the Tribunal may treat the imposition of such punishment as itself showing victimization or unfair labour practice. Law to this effect was laid by the Apex Court in Hind Construction and Engineering Company Ltd. (1965 (I) LLJ 462), Likewise in Management of the Federation of Indain Chambers of Commerce and Industy (1971 (II) LLJ 630) the Apex Court ruled that the employer made a mountain out of a mole hill and had blown a trivial matter into one involving loss of prestige and reputation and as such punishment of dismissal was held to be unwarranted. In Ram Kishan (1996 (I) LLJ 982) the delinquent employee was dismissed from service for using abusive language against a superior officer. On the facts and in the circumstances of the case, the Apex Court held that the punishment of dismissal was harsh and disproportionate to the gravity of the charge imputed to the delinquent. It was ruled therein, "when abusive language is used by anybody against a superior, it must be understood in the environment in which that person is situated and the circumstances surrounding the event that led to the use of abusive language. No straight- jacket formula could be evolved in adjudicating whether the abusive language in the given circumstances would warrant dismissal from service. Each case has to be considered on its own facts".

76. In B.M.Patil (1996 (11) LLJ 536), Justice Mohan Kumar of Karnataka High Court observed that in exercise of discretion, the Disciplinary Authority should not act like a robot and justice should be moulded with humanism and understanding. It has to assess each case on its own merit and each set of fact should be decided with reference to the evidence recording the allegation, which should be basis of the decision. The past conduct of the worker may be a ground for assuming that he might have a propensity to commit the misconduct and to assess the quantum of punishment to be imposed. In that case a conductor of the bus was dismissed from service for causing revenue loss of 50p to the employer by irregular sale of tickets. It was held that the punishment was too harsh and disproportionate to the act of misconduct.

77. After insertion of section 11-A of the Act, the jurisdiction to interfere with the punishment is there with the Tribunal, who has to see whether punishment imposed by the employer commensurate with the gravity of the act of misconduct. If it comes to the conclusion that the misconduct is proved, it may still hold that the punishment is not justified because misconduct alleged and proved is such as it does not warrant punishment of discharge or dismissal and where necessary, set aside the order of discharge or dismissal and direct reinstatement with or without any terms or conditions as it thinks fit or give any other relief, including the award of lesser punishment, in lieu of discharge or dismissal, as the circumstance of the case may warrant. Reference can be made to a precedent in Sanatak Singh (1984 Lab.I.C.817). The discretion to award punishment lesser than the punishment of discharge or dismissal has to be judiciously exercised and the Tribunal

can interfere only when it is satisfied that the punishment imposed by the management is highly disproportionate to the decree of the guilt of the workman. Reference can be made to the precedent in Kachraji Motiji Parmar (1994 (11) LLJ 332). Thus it is evident that the Tribunal has now jurisdicatioon and power of substituting its own measure of punishment in place of the managerial wisdom, once it is satisfied that the order of discharge or dismissal is not justified. On facts and in the circumstances of a case, section 11A of the Act specifically gives two folds powers to the Industrial Tribunal, first is virtually the power of appeal against findings of fact made by the Enquiry Officer in his report with regard to the adequacy of the evidence and the conclusion on facts and secondly of foremost importance, is the power of reappraisal of quantum of punishment.

78. In Bharat Heavy Electricals Ltd. (2005 (2) S.C.C. 481) the Apex Court was confronted with the proposition as to whether power available to the Industrial Tribunal under section 11-A of the Act are unlimited. The Court opined that "there is no such thing as unlimited jurisdiction vested with any judicial or quasi judicial forum and unfettered discretion is sworn enemy of the constitutional guarantee against discrimination. An unlimited jurisdiction leads to unreasonableness. No authority, be it administrative or judicial, has any power to exercise the discretion vested in it unless the same is based on justifiable grounds supported by acceptable materials and reasons thereof'. The Apex Court relied its judgement in C.M.C. Hospital Employees Union (1987 (4) S.C.C. 691) wherein it was held that "section 11-A cannot be considered as conferring an arbitrary power on the Industrial Tribunal or the Labour Court. The power under section 11-A of the Act has to be exercised judiciously and the Industrial Tribunal or Labour Court is expected to interfere with the decision of a management under section 11-A of the Act only when it is satisfied that the punishment imposed by the management is highly disproportionate to the degree of guilt of the workmen concerned. The Industrial Tribunal or Labour Court has to give reasons for its decision". In Hombe Gowda Educational Trust (2006 (1) S.C.C. 430) the Apex Court announced that the Tribunal would not normally interfere with the quantum of punishment imposed by the employer unless an appropriate case is made out therefore.

79. Power to set aside order of discharge or dismissal and grant relief of reinstatement or lesser punishment is not untrammeled power. This power has to be exercised only when Tribunal is satisfied that the order of discharge or dismissal was not justified. This satisfaction of the Tribunal is objective satisfaction and not subjective one. It involves application of the mind by the Tribunal to various circumstances like nature of delinquency committed by the workman, his past conduct, impact of delinquency on employer's business, besides length of service rendered by him. Furthermore, the Tribunal has to consider whether the decision taken by the employer is just or not. Only after taking into consideration these aspects, the Tribunal can upset the punishment imposed by the employer. The quantum of punishment cannot be interfered with without recording specific findings on points referred above. No indulgence is to be granted to a person, who is guilty of grave misconduct like cheating, fraud, misappropriation of employers fund, theft of public property etc. A reference can be made to the precedent in Bhagirath Mal Rainwa (1995 (I) LLJ 960).

80. What should be the appropriate punishment for the misconduct committed the claimant? Claimant failed to follow lawful orders issued by the management when he was commanded to under retest pursuant to Civil Aviation Requirements effect from 30.11.2006. His act was subversive of discipline, which is a grave misconduct. Furthermore, he lacked proficiency and crashed Dhruv Advanced Light Helicopter VT BSN on 15.01.2012. His act led to complete damage of the helicopter. Such gross misconduct on his part requires stern action. A pilot in command who lacks proficiency and skill cannot be retained in service. Therefore, termination of service is the appropriate punishment which can be awarded to such an employee. Resultantly, I am of the view that punishment awarded to the claimant commensurate to his misconduct.

81. Whether the penalty of termination of service would relate back to the date of order passed by the management? For an answer, it is expedient to consider the precedents handed down by the Apex Court. In Ranipur Colliery [(1959) Supp. 2 SCR 719] the employer conducted a domestic enquiry though defective and passed an order of dismissal and moved the Tribunal for approval of that order. It was ruled therein that if the enquiry is not defective, the Tribunal has only to see whether there was a prima facie case for dismissal and whether the employer had come to the bonafide conclusion that the employee was guilty of misconduct. Thereafter on coming to that conclusion that the employer had bonafide come to the conclusion that the employee was guilty, that is, there was no unfair labour practice and no victimization, the Tribunal would grant the approval which would relate back to the date from which the employer had ordered the dismissal. If the enquiry is defective for any reason, the Tribunal would also have to consider for itself on the evidence adduced before it whether the dismissal was justified. However on coming to the conclusion on its own appraisal of evidence adduced before it that the dismissal was justified its approval of the order of dismissal made by the employer on defective enquiry would still relate back to the date when order was made.

82. In Phulbari Tea Estate (1960 (I) S.C.R. 32) the domestic enquiry held by the employer culminating in the order of dismissal was found to be invalid, being in gross violation of the rules of natural justice. Even before the Tribunal, the employer did not lead proper evidence to justify the order of dismissal and contended itself by merely producing the statement of certain witnesses recorded during the domestic enquiry and the workman had no

opportunity to cross- examine the witnesses before the Tribunal. In the absence of any evidence before it, justifying the dismissal, the Tribunal set aside the order of dismissal and granted compensation in lieu of reinstatement, which order was upheld by the Apex Court. In that case question of relating back of the order of dismissal did not arise.

83. In P.H. Kalyani (1963 (1) LLJ 673) the employer dismissed the workman after holding a domestic enquiry into the charges. Since some dispute was pending before the Industrial Tribunal, the employer applied for "approval" of action of dismissal in compliance with the proviso to section 33(2)(b) of the Act. The workman made an application under section 33-A of the Act. Apart from relying on validity of domestic enquiry, the employer adduced all the evidence before the Tribunal in support of its action. On basis of evidence before it, the Tribunal came to the conclusion that the facts of misconduct committed by the workman were of serious nature involving danger to human life and therefore dismissed the application under section 33-A and accorded "approval" to the action of dismissal taken by the employer. In this situation the Apex Court held that if the enquiry is not defective and the action of the employer is bona fide, the Tribunal will grant the "approval" and the dismissal would "relate back to the date from which the employer had ordered dismissal". If the enquiry is invalid for any reason, the Tribunal will have to consider for itself on the evidence adduced before it, whether the dismissal was justified. If it comes to the conclusion on its own appraisal of such evidence that the dismissal was justified, the dismissal would "still relate back to the date when the order, was made". Sasa Musa Sugar Works case (supra) was distinguished saying that observations made therein "apply only to a case where the employer had neither dismissed the employee nor had come to the conclusion that a case for dismissal had been made. In that case, the dismissal of the employee takes effect from the date cf the award and so until then the relation of employer and employee will continue in law and in fact".

84. D.C.Roy [(1976) Lab. I.C. 1142] is the illustration where domestic enquiry held by the employer was found to be invalid being violative of principles of natural justice and the employer had justified the order of dismissal by leading evidence before the Labour Court, on appraisal of which the Labour Court found the order of dismissal justified. In appeal, the Apex Court upheld the award with the observation that "the ratio of Kalyani's case (supra) would therefore, govern the case and the judgment of the Labour Court must relate back to the date on which the order of dismissal was passed".

85. In Gujarat Steel Tubes Ltd. (1980 (1) LLJ 137) inverted image of the D.C. Roy's case was presented by a majority of three judge bench wherein it was held that "where no enquiry has preceded punitive discharge, and the Tribunal for the first time upholds the punishment, this court in D.C. Roy vs. Presiding Officer (supra) has taken the view that full wages be paid until the date of the award. There cannot be any relation back of the date of dismissal when the management passed the void order". Though the court ruled that law laid in D.C. Roy is correct yet it followed obiter instead of the decision. Observations of the Apex Court in above decision, bearing on the relate back rule, were taulted in R.Thiruvirkolam (1997 (1) SCC 9) on the ground that they "are not in the line with the decision in Kalyani which was binding or with D.C. Roy to which learned Judge Krishna Iyer J. was a party. It also does not match with the juristic principle discussed in Wade". The view taken in R.Thiruvirkolam (supra) was affirmed in Punjab Dairy Development Corporation Ltd. (1997 (2) LLJ 1041).

86. In view of the catena of decisions, detailed above, it is clear that an employer can justify its action by leading evidence before the Tribunal. This equally applies to cases of total absence of enquiry and defective enquiry. A case of defective enquiry stands on the same footing as no enquiry. If no evidence is led or evidence adduced does not justify the termination of service by the employer, the Tribunal can order reinstatement or payment of compensation as it may think fit. But if it finds on the evidence adduced before it that the termination of service is justified, the doctrine of relate back is pressed into service to bridge the time gap between the rupture of the relationship of employer and employee and the finding of the Tribunal.

87. If the workman is to be paid wages upto the date of the award of the Tribunal, the Parliament has to enact so, declares the Delhi High Court in Ranjit Singh Tomar (ILR 1983 Delhi 802). Obviously the Act does not make any provision for the situation. Precedents in Ghanshyam Das Shrivastava (1973 (1) SCC 656), Capt. M.Paul Anthony (1999 (3) SCC 679) and South Bengal State Transport Corporation (2006 (2) SCC 584) nowhere deal with the controversy, hence are not discussed.

88. Relying the law laid above and facts relating to misconduct of the claimant, it is announced that punishment of termination from service awarded to the claimant, would relate back to the date of the order.

Relief

89. In view of above discussion, I am of the considered opinion that the Pilot in command lacks proficiency and skill. Such an employee cannot be retained in service. Therefore punishment of termination is not to be interfered with by this Tribunal. The claimant is not entitled to any relief not to talk of relief reinstatement in service. His claim statement is liable to be dismissed. Accordingly it is concluded that the action of the management in terminating his service is legal and justified. Claim statement is brushed aside. An award is passed in favour of the management and against the claimant. It be sent to appropriate Govt. for publication.

Dated : 14.2.2014

Dr. R.K. YADAV, Presiding Officer

नई दिल्ली, 4 अप्रैल, 2014

का.आ. 1228.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टील अथॉरिटी ऑफ इंडिया लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, धनबाद के पंचाट (संदर्भ संख्या 84/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 1-4-2014 को प्राप्त हुआ था ।

[सं. एल-29011/35/2003-आईआर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 4th April, 2014

S.O. 1228.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 84/2003) of the Central Government Industrial Tribunal/Labour Court-2, Dhanbad, now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Steel Authority of India Limited and their workman, which was received by the Central Government on 1-4-2014

[No. L-29011/35/2003-IR(M)]

JOHAN TOPNO, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, (NO. 2), AT DHANBAD

PRESENT : SHRI KISHORI RAM, Presiding Officer

In the matter of an Industrial Dispute under Section 10(1)(d) of the I.D.Act.,1947

REFERENCE No. 84 of 2003

PARTIES : The President,
Palamau Pramondal Khan Mazdoor Sangh, Daltonganj

Vs.

The Exec. Director,
Steel Authority of India Ltd.,
(SAIL) 10, Camac Street,
Kolkata-17

APPEARANCES :

On behalf of the workman/Union : None

On behalf of the Management : Mr. D. K.Verma, Ld. Advocate

State : Jharkhand Industry : Mines

Dated, Dhanbad, the 12th Feb., 2014

AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Sec.10(1)(d) of the I.D. Act,1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-29011/35/2003-IR(M), dt 13.06.2006

SCHEDULE

"Whether the action of the Management of SAIL (RMD) in not extending the term of contract for the contractors engaged even though they was enough work in Tulsidamore, Dolomite Mines and Bhaw Nathpur Lime Stone Mines causing to stop the work w.e.f. 1.2.2002 to 11.3.2002 is legal and justified? Whether the stand taken by the Management of SAIL (RMD) even after directing the contractors not to execute work from 1.2.2002 to 11.3.2002 that the wages for the above period is to be decided with the contractors is legal and or justified? Whether the claim of the idle wages by the Union under Section 25 C of the I.D Act for the above period to the workers as per enclosed lists legal and or justified? If not, to what relief the workers are entitled?"

2. Neither the Union Representative nor any Advocate for the Contractors appeared Mr. D.K.Verma, the Ld.Advocate for the O.P./Management is present. Today the case is fixed for hearing over the affidavited petition dt.13.12.13 earlier filed under the signature of Mr.Satyapal Verma, the Union Representative for withdrawal of the case with a prayer to pass "No Dispute Award". Mr.Verma, the Ld. Counsel for the O.P./ Management has no objection to it, if the union Representative is willing to withdraw it voluntarily.

The perusal of the case record reveals that the Union Representative has mentioned in the aforesaid petition that since due to closure of the Mines in question for non-clearance of Environmental Clearance (EC) and Forestry Clearance (FC), the workers are still sitting idle and starving since August, 2013, they are not in a position to contest the present Reference; so it was decided by the union to withdraw the case in the interest of the workmen; moreover the Union is not willing to contest the case anymore.

The present reference relates to an issue about non-extension of the term of contract by the Management for the Contractors despite enough work in Tulsida more, Dolomite Mines and Bhaw Nathpur Lime Stone Mines. Though two witnesses, namely, WWI Jagdish Ram and WW2 Bikhari Ram on their affidavited Chief were cross-examined by Mr. Arjun Singh and Mr. D.K. Verma, the Ld. Advocates for the Contractor and the SAIL respectively.

Under these circumstances, the instant case is closed as "No Industrial Dispute" existent accordingly; it is passed an Order of "No dispute".

KISHORI RAM, Presiding Officer

Annexure A

List of Contractual Workers of M/s. Anil Kumar, Contractor, Limestone Mines, Bhawanathpur

Sl.No.	'B' Form No.	Name S/Sri
1	2	3
1	82	Kapil deo Ram
2	83	Sahadev Mahto
3	110	Nirmal Oraon
4	111	Sugrim Uraon
5	126	Mahadeo Uraon
6	244	Sikandra Uraon
7	034	Jagdish Ram
8	036	Antu Ram
9	042	Dharnraj Mochi
10.	045	Dhanukdhari Mochi
11	054	Gasriba Bhuiya
12	068	Jai Kumar Ram
13	072	Nanku Dusadh
14	081	R.C. Raiwar
15	083	Kail Baitha
16	091	Amardeo Uraon
17	095	R.D. Uraon
18	103	Jagarnath Uraon
19	106	R.K. Uraon
20	107	R.C. Uraon
21	111	Ghura Uraon
22	114	Janki Bhuiya
23	142	R.N. Bhuiya
24	154	Jagdish Uraon
25	155	B. Bhuiya
26	164	S. Hussain
27	166	R.S. Bhuiya
28	169	B. Choudhary
29	177	Haridas Uraon
30	178	Sharma Uraon
31	179	Jitan Uraon
32	180	H. Uraon
33	181	R.K. Uraon
34	191	Jhari Mochi
35	197	Harihar Mochi
36	201	Sukan Uraon
37	205	Sohan Uraon
38	210	Suresh Paswan
39	211	R.D. Ram
40	212	A.K.Mehta
41	217	Bhim Singh
42	219	F. Prajapati
43	222	Sita Ram
44	223	S. Baitha
45	225	Ayub Md.
46	226	Jhulan Sah
Supervisory Staff		
1	183	Jugal Kishor Singh
2	185	Rajendra Choudhary
3	186	Vijay Singh
4	187	Mithilesh Dubey
5	188	Jai Kumar Singh
6	189	Sudheshwar Prajapati
7	190	Bikeshwar Paswan

List of Contractual Workers of M/s. S.L. Co., Contractor, Limestone Mines, Bhawanathpur

Sl.No.	'B' Form No.	Name S/Sri
1	4	Ram Ru Mohta
2	6	Mohan Singh
3	12	Basant Mehta
4	18	Digan Mehta
5	21	Baijnath Baitha
6	22	Rajendra Sah
7	28	Hasrat Miya
8	31	M. Ansari
9	32	Sarju Baitha
10.	37	Bifan Ram
11	50	Gauri Singh
12	60	Ram Sundar Choudhary
13	61	Baijnath Ram
14	67	Mhabir Ram
15	81	Rahman Miya
16	82	Maruf A1i
17	85	Laxman Mehta
18	86	Ganga Chamar
19	93	Chattu Baitha
20	95	Rajba1i Ram
21	100	Jamaludin Mian

1	2	3
22	101	M. Ansari
23	102	Om. Ansari
24	106	Bhuneshwar Ram
25	120	S.K. Ram
26	123	S. Baitha
27	138	R. Mehta
28	141	Jashmudin Mian
29	177	Amirka Ram
30	195	Dharamdeo Mehta
31	322	Shankar Ram
32	213	Kameshwar singh
33	217	R. Baitha
34	219	Bigan Ram
35	221	R. Singh
36	226	Guthal Ram
37	229	Kapi1 deo Singh
38	231	Badan Yadav
39	232	Ajay Singh
40	233	M. Miya
41	236	Amar Choubey
42	238	S. Prasad
43	239	Raj Kumar Ram
44	240	Ghoghan Baitha
45	243	Chandrika Singh
Supervisors		
1	187	J.L.N. Reddy
2	197	Ashok Kumar
3	174	Suresh Pd.
4	210	Lok Nath Ram
5	173	Ramjee Thakur
6	290	Shiv Shankar Pd.
7	295	C.S. Banerjee
8	291	Sumer Upadhyaya
9	092	Uma Shankar Singh

List of Contractual Workers of M/s. I.S.S. (C) Co., Contractor, Limestone Mines, Bhawanthapur

Sl.No.	'B' Form No.	Name S/Sri
1	1	J. Biyar
2	2	R. Mehta -I
3	7	B. Ali
4	8	Gopi Pal
5	23	Charita Ram
6	25	Pyari Biyar
7	26	Maluki Biyar
8	31	Birja Biyar
9	36	Amerika Ram
10.	40	Yakuph Miya
11	45	Jugal Ram
12	50	Jasngali Bhuiya
13	54	S. Dheodhani Sah
14	56	Guthal Miya
15	58	I. Ali
16	61	Shankar
17	64	Puttu Biyar
18	82	Dhami Sah
19	84	Permeshwar Sah
20	86	B. Singh (Baudh)
21	89	Bireandr Chaudhari
22	96	Lahru Sah
23	97	Chaturgunhj Sah
24	99	Samshuddin Mia
25	128	Ram Lakhan Bhuiya
26	130	Inderjet Sah
27	131	Nasurddin Miya
28	135	S. Miya
29	136	Hafij Miya
30	138	Chanderman Sah
31	139	Lalgee Sah
32	142	Kailsash Ram
33	143	Dawarika Ram
34	145	Naresh Ram
35	146	A. Miya
36	149	Ram Kailash Sah
37	151	Sita Ram Mahara
38	161	Sakur Miya-II
39	162	Raj Keshwar Ram
40	164	Laljee Yadav
41	165	Lakhan Ram
42	166	Sangu Sah
43	195	M. Yadav
44	198	Jagrup Yadav
45	205	Kamewhar Sah
46	206	R.J. Ram
47	209	Habib Mian
48	216	Tpeshwar Ram
49	218	Jibrail Mian

1	2	3
50	219	Islam Ansari
51	220	S. Chaudhary
52	221	Fariad Ali
53	222	Adam Ali
54	223	Aklu Sah
Supervisory Staff		
1	188	C.B. Yadav
2	192	Devendra Kr. Singh
3	190	Shri Ram Yadav
4	202	Baleshwar Pd. Singh
5	200	Rana Prasad
6	199	Ashok Kr. Singh
7	201	Lallu Ram
8	193	Ram Avilakh Shukla
9	183	Ajay Kr. Sharma

List of Contractual Workers of M/s. R.S. Grewal, Contractor, Limestone Mines, Bhawanathapur

Sl.No.	'B' Form No.	Name S/Sri
1	37	Kailash Mahta
2	43	Chaturgun Ram
3	47	Nandeo Ram
4	99	Ramjee Ram
5	100	Ram Saran Ram
6	117	S.R. Praiapatai
7	119	Naresh Mehta
8	121	Ram Brikash Ram
9	122	Udai Ram
10	124	Jadun Sah
11	172	Shobnath Ram
12	180	Raghubir Prajapati
13	181	Ramesh Prasad
14	183	Nandeo P.P.
15	186	R. Ram II
16	188	Ram Pati Mehta
17	192	Ganesh Mehta
18	193	Lakhan Ram
19	194	Sarwan Ram
20	196	H.M. Pandey
21	259	Birjhu Ram I
22	285	Jagarnath Sah
23	299	Chandrika Ram
24	328	Pragash Ram
25	329	Dhaneshwar Ram
26	007	Donath Ram
27	008	Santoo Ram
28	10	Raj Kumar Ram
29	11	Bachan Ram
30	13	Gopi Ram
31	17	Tpeshwar Ram
32	18	B. Prajapathi
33	19	N. Prajapathi
34	21	L. Ram
35	22	R.S. Ram
36	25	Amerika Ram
37	27	Hari Charan Mehta
38	36	Ganesh Ram
39	37	Sudarshan Ram
40	41	Inderadeo Ram
41	43	L. Baitha
42	110	Dukhi Ram-I
43	111	Dukhi Ram-II
44	117	Jawahar Ram
45	124	Suresh Ram
46	139	Maloo Sah
47	122	B. Piyar
48	129	Sheenath Ram
49	130	Kameshwar Mehta
50	131	S. Mehta
51	132	Prasad Mehta
52	133	Vijay Bikar
53	138	Sita Ram
54	141	Sarju Mehta
55	140	Bishambhar Ram
56	145	Sita Mehta
57	146	Nandoo Paswan
58	147	Laloo Mehta
Supervisory		
1	127	Mundrika Ram
2	136	Girija Nand Dubey
3	137	Girendra Pd. Mishra
4	135	Krishna Nand Shukla
5	134	Shankar Suman Srivastava
6	207	Ratandeep Kr. Sinha

Annexure B

List of Contractual Workmen of M/s. Anil Kumar, Contractor of Dolomite Mines

Sl.No.	'B' Form No.	Name S/Sri
1	56	Smt. Fulmania Devi
2	57	Lalman Ram
3	65	Ramjee Oraon
4	66	Muni Oraon
7	89	Deo Kumar Oraon
8	123	Chaitu Oraon
9	126	Inderdeo Oraon
10	128	Krishna Mahato
11	141	Shanti Devi
12	198	Bifan Sah
13	199	Jagarnath Sah
14	212	Gaya Mahato
15	213	Shalik Miya
16	245	Harnath Singh
17	249	Gauri Shankar Singh
18	261	Sundera Thakur
19	262	Maniki Ram
20	268	Amerika Ram
21	281	Makharu Ram
22	295	Ram Prit Baitha
23	296	Salima Sheikh
24	299	Mundrika Bhuiya
25	301	Mahadeen Sheikh
26	303	Bihari Oraon
27	306	Majuddin Mia
28	307	Sita Ram Mahato
29	315	Pyari Oraon
30	316	Raksha Ram
31	317	Jatan Bhuiya
32	318	Ram Khelawan Oraon
33	319	Pratap Singh
34	320	Jatan Singh
35	321	Subhash Ram
36	323	Chandrika Bhuiya
37	324	Rajdeo Oraon
38	325	Sheo Singh
39	326	Dinath Sah
40	328	Suba Chand Yadav
41	330	Akshawat Sah
42	332	Bhisham Sah
43	335	Rajendra Ram
44	339	Charaku Ram
45	340	Ramesh Paswan
46	341	Bhawat Mahato
47	342	Gulab Chand Yadav
48	344	Ram Briksh Sinah
49	345	Surendra Singh
50	346	Rajendera Singh
51	347	Bishwanath Singh
52	348	Lakhan Ram
53	350	Najime Rashual
54	351	Lal Bihari Singh
55	352	Inna Ram
56	353	Ramjeet Ram
57	354	Rameshwar Yadav
58	355	Sarju Bhuiya
59	356	Suneshwar Yadav
60	357	Narsingh Ram
61	358	Raieshwar Ram
62	359	Triveni Ram
63	360	Jawahir Singh
64	361	Rabindra Ram
65	362	Permaeshwar Oraon
66	363	Mangru Uraon
67	364	Dinanath Oraon
68	365	Rahkumar Bhuiya
69	366	Kodu Ram
70	367	Rajeshwar Oraon
71	369	Boleash Uraon
72	371	Laloo Ram
73	372	Loknath Ram
74	373	Laxmi Mahato
75	374	Hirra Singh
SUPERVISOR		
1	284	Basant Mishra
2	285	Bideshwar Singh
3	287	Ram Lakhan Yadav
4	290	Birendra Kumar Mishra

List of Contractual Workmen of M/s. S.L. & Co. of Dolomite Mines

Sl.No.	'B' Form No.	Name S/Sri
1	50	Shri Jai Ram Ram
2	57	Ramjee Paswan

1	2	3
3	144	Chura Biyar
4	180	Lal Bihari Ram
5	184	Shankar Biyar
6	186	Satar Mia
7	187	Modina Bibi
8	192	Suraj Ram
9	193	Giriwar Ram
10.	194	Bachu Biyar
11	203	Santu Ram
12	208	Bishwanath Dusadh
13	242	Prabhu Dusadh
14	254	Sheodash Ram
15	255	Bisheshwar Ram
16	256	Laxman Ram
17	259	Ram Raj Chero
18	264	Bandhu Mahata
19	267	Ram Janam Singh
20	268	Fathuli Ram
21	284	Suresh Mahara (II)
22	288	Sheo Narain Singh
23	389	Leyakat Ali
24	308	Naresh Mshara
25	310	Asbarfi Paswan
26	312	Rajkurnar Mistgry
27	356	Kail Ram
28	357	Bharathu Ram
29	358	Ram Pyare Ram
30	359	Ram jee Biyar
31	360	Lakhan Bhuiya
32	361	Kashi Bhuiya
33	362	Raj Deo Bhuiya
34	363	Mukhlal Bhuiya
35	364	Nathu Singh
36	365	Moti Thakur
37	366	Kameshwar Bhuiya
38	367	Gulab Ram
39	368	Jhari Sah
40	369	Jaraphat Miya
41	370	Ram Nath Biyar
42	373	Rajnath Biyar
43	375	Baiinath Biyar
44	376	Bando Ali
45	377	Bishwanath Dusadh
46	379	Ram Dhani Mistry
47	380	Mundrika Singh
48	381	Makharu Bhuiya ,
49	382	Bijjhu Ghashi
50	383	Keshwar Singh
51	384	Shyam Sundar Paswan
52	389	Barfi Ram
53	390	Chandrika Paswan
54	392	Sanesh Ram
55	393	Pragash Rajwar
56	394	Manik Chandra Thakur
57	395	Birbal Biyar
58	396	Dinesh Ram
59	397	Krit Biyar
60	398	Amrit Biyar
61	399	Khushilal Sah
62	400	Asharfi Bhuiya
63	401	Belash Uraon
64	402	Daya Shankar Singh
65	403	Jai Kumar Singh
Wagon Loader :		
1	253	Ganesh Ram
2	178	Girjhan Singh
Supervisors :		
01	324	Ram Parikha Mahato
02	329	Ram Bhajan Yadav
03	331	Sushil Kumr Singh
04	353	Ram Vijay Singh

List of Contractual Workmen of M/s. I.S.S. (Con) Co. of Dolomite Mines

Sl.No.	'B' Form No.	Name S/Sri
1	07	Baldeo Singh
2	08	Pragash Singh
3	10	Birbal Singh
4	16	Modi Ram
5	20	Masudan Singh
6	50	Tapeshwar Baitha
7	51	Naresh Baitha
8	56	Keshar Ram
9	59	Ghuran Ram
10	64	Lal Mohan Ram
11	65	Basant Ram
12	66	Basdeo Ram

1	2	3
13	67	Suraj Deo Baitha
14	69	Ram Chandra Ram
15	70	Rameshwar Ram
16	73	Raghunath Ram
17	75	Mithayee Sah
18	76	Bahadur Sah
19	89	Tivu Bhuiya
20	81	Puran Bhuiya
21	99	Raghunandan Mahato
22	186	Ram Pd.Orzon
23	189	Jagamath Uraon
24	190	Fulchand Uraon
25	198	Laxman Ram
26	218	Lacchu Uraon
27	219	Naresh Uraon
28	220	Rikhi Sah
29	223	Jagarnath Mahara
30	225	Harihar Ram
31	227	Yadunandan Ram
32	230	Kalicharan Uraon
33	233	Mohan Sah
34	234	Bihari Sah
35	239	Asharfi Mochi
36	240	Aklu Mochi
37	242	Sarju Mahra
38	252	Doman Uraon
39	254	Jahur Mian
40	259	Ram Dhani Uraon
41	260	Baharu Uraon
42	261	Kanhai Pal
43	262	Ramjee Baitha
44	263	Ganuri Ram
45	268	Narain Chere
46	273	Bhikhi Ram
47	276	Sheo Bacghan Uraon
48	281	Mithan Uraon
49	282	Habib Mia
50	283	Hari Ram ,
51	286	Sachita Ram
52	287	Bishnu Ram
53	288	Bhola Ram
54	292	Ram Dayal Uraon
55	293	Bishwanath Oraon
56	294	Ganesh Oraon
57	295	Gaya Uraon
58	296	Jawahir Ram
59	297	Jag Mohan Uraon
60	298	Rajendra Uraon
61	299	Suresh Uraon
62	300	Ram Kesh Ram
63	302	Narain Ram
64	304	Basdeeo Sinzh
65	305	Ram Deo Chere
66	307	Ram Janam Uraon
67	308	Belash Uraon
68	309	Asharfi Uraon
69	311	Harihar Singh
70	57	Bikhari Ram
71	221	Deena Baitha
Supervisors :		
01	2	J. K. Pandey
02	184	Raieshwar Singh
03	290	Manohar Ram
Wagon Loaders :		
01	112	Mandip Biyar
02	113	Pyare Sah
03	115	Jainath Biyar
04	116	Ghuran Biyar
05	121	Bhukhari Chere
06	122	Budh Rai Chere
07	123	Sarju Biyar I
08	125	Suresh Biyar
09	150	Girija Biyar
10	163	Sitararn Singh
11	172	Raju Biyar
12	175	Buchi Biyar
13	176	Pyare Biyar
14	177	Narain Chere
15	178	Naresh Biyar
16	182	Rupdeeo Choudhary
17	187	Bishwanath Biyar

List of Contractual Workmen of M/s. R.S. Grewal

Sl.No.	'B' Form No.	Name S/Sri
1	19	Amerika Singh
2	20	Ayodhya Ram
3	44	Binod Bhuiya

1	2	3
4	45	Bhikham Bhuiya
5	48	Sudeshi Bhuiya
6	60	Ram Peveri Biyar
7	61	Lal jee Biyar
8	70	Naresh Biyar
9	71	Nakoo Biyar
10	81	Preman Singh
11	103	Raj Muni Ram
12	104	Deo Sharma Ram
13	105	Bhikhari Ram
14	108	Birjhan Singh
15	114	Sheo Kumar Ram
16	115	Krishna Ram
17	117	Mandesh Biyar
18	118	Lakhan Biyar
19	119	Bulchoo Biyar
20	122	Motichand Sah
21	123	Ganga Ram
22	125	Jagdish Ram
23	128	A1i Bakash Sheikha
24	129	Govind Thakur
25	130	Prayag Ram
26	135	Sobhnath Uraon
27	137	Laxman Singh
28	146	Rajeshwar Mahato
29	148	Delip Singh
30	149	Dhanu Ram
31	150	Raihan Ram
32	151	Bho1a Rajwar
33	153	Mandeep Ram
34	154	Harihar Moochi
35	155	Durian Singh
36	156	Indrajeet Bhuiya
37	158	Bhuneshwar Ram
38	160	Chhatan Raiwar
39	162	Sahadat Ali
40	163	Sunder Rajwar
41	164	Makhan Singh
42	165	Ram Sundar Rajwar
43	167	Raj Kumar Mochi
44	168	Nagina Singh
45	169	Sarju
46	171	Ram Nath Mochi
47	172	Motal Ram
48	173	Madan Singh
49	174	Sheo Pd.Ram
50	176	Dewa Ram
51	177	Basudeo Ram
52	178	Sambhu Ram
53	180	Suner Ram
54	181	Giraj Ram
55	182	Ambikha Ram
56	183	Raj Nath Singh
57	184	Ram Deo Biyar
58	187'	Ram Piyari Bhuiya
59	188	Shankar Ram
60	190	Bhola Ram
61	191	Tulsi Singh
62	192	Sheo Kumar Singh
63	193	Raj Nath Ram
64	196	Kanhai Singh
65	197	Ajmatula Sheikh
66	199	Rarnjee biyar
67	200	Bideshi Bhuiya
Wagon Loader		
1	86	Ram Pado Ram
2	87	Nankaku Ram
3	88	Sita Ram
4	89	Harbansh Ram
5	90	Sita Ram Chere
6	91	Kapil Sah
7	96	Mundrika Mahato
8	98	Kashim Ansari
9	100	Sarju Biyar
10	103	Suresh Ram
11	104	Jashim Ansari
12	106	Bachan Ram
13	107	Jagdish Ram
14	02	Ajay Singh
15	04	Murasat Ali
Supervisor/Munshi		
01	205	Nathu Singh Deo
02	203	Sheo Kumar Verma
03	202	Dilip Kumar Verma
04	206	Lav Tiwary

List of Contractual Workers of M/s. Ashok Kumar of Dolomite Mines

Sl.No.	'B' Form No.	Name S/Sri
1	2	3
1	1	Raj Deo Ram
2	2	Nandoo Ram
3	3	Dharamdeo Ram
4	4	Suneshwar Ram
5	5	Baijnath Ram
6	11	Yagpat Ram
7	12	Sardar Ram
8	14	Narain Ram
9	15	Prayag Baitha
10	16	Baijnath Ram
11	17	Gulab Chand Ram
12	18	Muneshwar Ram
13	19	Chandrika Ram
14	20	Prasad Ram
15	21	Triveni Ram
16	22	Bideshi Ram
17	23	Ram Bachan Ram
18	24	Brikash Ram
19	25	Bhukhan Bhuiya
20	26	Rama Bhuiya
21	29	Shital Ram
22	30	Laxman Ram
23	31	Harihar Ram
24	32	Bishwanath Biyar
25	33	Gulab Biyar
26	35	Amerika Ram
27	36	Budhan Ram
28	37	Sohar Bhuiya
29	38	Sharwan Bhuiya
30	40	Ram Pati Ram
31	41	Mahendra Sah
32	43	Baban Sah
33	44	Jiwrakhan Sah
34	49	Sinil Toppo
35	51	Ram Lakhan Ram
36	52	Nihora Ram
37	54	Ram Pyera Bhuiya
38	55	Sheo Narain Bhuiya
39	56	Lal Bihari Bhuiya
40	57	Ram Nath Bhuiya
1	2	3
41	58	Anil Bhuiya
42	60	Muneshwar Rajwar
43	61	Asharfi Rajwar
44	63	Munshi Rajwar
45	64	Nathuni Rajwar
46	65	Laxman Rajwar
47	66	Tulsi Rajwar
48	67	Rata Rajwar
49	71	Ramjeet Rajwar
50	75	Haquemuddin Sheikh
51	76	Kalamuddin Sheikh
52	77	Frukh Sheikh
53	78	Kayammudin Ansari
54	79	Asshgar Ali
55	80	Karamjit Sah
Wagon Loader		
01	82	Rajeshwar Ram
02	84	Samjhawan Ram
03	85	Ram Jee Ram
04	86	Amerika Uraon,
05	87	Bhagaru Uraon
06	88	Lakhan Ram
Supervisor		
01	92	Krishna Kumar Pd.
02	93	Dharamdeo Choubey
03	94	Jitendra Kumar Dubey

List of Contractual Workers of M/s. R.R.P. Deo, Contractor of Dolomite Mines

Sl.No.	'B' Form No.	Name S/Sri
I	8	Sharwan Ram
2	28	Rajnath Singh
3	30	Kodu Singh
4	32	Harihar Singh
5	33	Sudama Ram
6	35	Jasmuddin Sheikh
7	36	Pragash Mahato
8	43	Bhukhu Singh
9	45	Raghu Singh
10	54	Kamala Singh
11	57	Awadesh Singh
12	62	Sarju Oraon
13	67	Ram Janam Singh
14	80	Tijan Singh

1	2	3
15	85	Jagdish Mahato
16	98	Jagdeo Ram
17	99	Raghunath Baitha
18	110	Dasrath Mahato
19	I11	Udai Mahato
20	112	Lala Mahato
21	114	Amar Sinah
22	115	Raj Kumar Singh
23	116	Mohan Singh
24	117	Ata Uraon
25	120	Ram Swarup Mahto
26	121	Bhola Ram
27	123	Bhajan Uraon
28	122	Nagemdr Singh
29	124	Rama Singh
30	125	Bign Korwa
31	126	Aliyag Sheikh
32	127	Harihar Mahato
33	128	Ram Swrup Yadav
34	129	Ram Nath Sah
Wagon Loader		
1	136	Jagdish Ram
2	134	Bishwanath Singh
3	135	Budhan Biyar
4	132	Deowan Ram
5	131	Somaru Singh
6	130	Ram Awatar Singh
Supervisor		
1	2	Ram Vijav Singh
2	3	Brahama Singh
3	4	Bijav Bhadur Singh
4	5	Sheonath Ram
5	107	Praduman Singh
6	108	Sidheshwar Tiwari
7	133	Surendra Prasad

List of Contractual Workers of M/s. R.R.P. Deo, Contractor of Dolomite Mines

Sl.No.	'B' Form No.	Name S/Sri
1	46	Yadunath Ram
2	49	Dharmu Ram
3	121	Teja Biyar
4	124	Jokhan Ram
5	127	Jaduni Kahar
6	138	Mishari Ram
7	140	Mankau Mahato
8	171	Majmuddin Mia
9	173	Sukhari Ram
10	175	Suleman Mia
11	184	Banshi Sah
12	195	Asharfi Ram
13	203	Ram Kewal Sah
14	205	Bishwanath Sah (A)
15	216	Hulash Biyar
16	217	Chanarik Biyar
17	220	Esahk Miya
18	224	Ram Nath Ram
19	227	Parikha Ram
20	230	Manick Chand Uraon
21	231	Ram Lal Ram
22	232	Raj Nath Oraon
23	233	Sita Ram (A)
24	235	Mahendra Sah
25	237	Palita Ram
26	243	Prayag Ram
27	244	Keyash Ram
28	245	Fekhan Ram
29	247	Suresh Paswan
30	249	Kariman Ram
31	251	Chandra Deo Paswan
32	252	Suraj Deom Paswan
33	252	Nageshwar Paswan
34	254	Khewraj Paswan
35	255	Lalu Paswan
36	256	Parshu Pawan
37	257	Rooda Paswan
38	258	Samukh Paswan
39	260	Ram Sunder Ram
Supervisor		
1	215	R.K. Parth
2	164	Binay Kumar Sharma
3	25	Alimuddin Sheikh
4	262	Ishwari Mahato

नई दिल्ली, 4 अप्रैल, 2014

का.आ. 1229.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार लाइफ इन्शुरेन्स कारपोरेशन ऑफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 11/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 11-02-2014 को प्राप्त हुआ था ।

[सं. एल-15025/1/2014-आईआर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 4th April, 2014

S.O. 1229.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 11/2001) of the Central Government Industrial Tribunal/Labour Court, Hyderabad, now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Life Insurance Corporation of India and their workman, which was received by the Central Government on 1/04/2014

[No. L-15025/1/2014-IR(M)]

JOHAN TOPNO, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

PRESENT : Smt. M. VIJAYA LAKSHMI, Presiding Officer

Dated the 30th day of January, 2014

INDUSTRIAL DISPUTE L.C. No. 11/2001

Between:

Sri J.S. Chandra,
S/o J. Thayapa,
R/o 21.265/A, LIC Colony,
Adhoni, Kurnool District ....Petitioner

AND

1. The Zonal Manager,
Zonal Office, LIC of India,
Secretariat Road,
Hyderabad.

2. Sr. Divisional Manager,
LIC of India,
Divisional Office,
College Road,
Cuddapah – 510 004 ....Respondent

Appearances :

For the Petitioner : M/s. G. Vidya Sagar, K. Udaya Sree, P. Sudheer Rao, B. Shivakumar & A. Laxman, Advocates

For the Respondent : M/s. Ravindra Bharati & P. Damodar Reddy, Advocates

AWARD

This is a petition filed by Sri J.S. Chandra, invoking Sec. 2A(2) of the Industrial Disputes Act, 1947 seeking for declaring the action of the Respondents in imposing punishment of his dismissal from service as wholly illegal and unjustified, consequently directing the Respondent to reinstate the Petitioner into service with all consequential benefits.

2. **The averments made in the petition in brief are as follows:**

Petitioner joined in the service of the Respondent bank as Typist in the year 1973. He got promoted as Assistant in the year 1993, as Cashier in the year 1994 and as Higher Grade Assistant in the year 1996. Since the beginning of his service Petitioner performed his duties to the satisfaction of his superiors. While so he was issued with a suspension letter dated 26.9.92 and after lapse of three months he was issued with charge-sheet dated 15.12.92, with the allegations as,

> "I. You have intentionally got Life Insurance cover on the life of his father J. Thayappa, Policy No. 650576223 and his mother Smt. Lakshmidevamma Policy No. 650577674 in March, 1989 without their knowledge and the relevant proposal form for Life Insurance were signed by him instead of by the proponent.
>
> II. That you have been paying premium on the policies of your parents to keep them in force since their inspection.
>
> III. That your father who is the nominee under the Policy No. 650577674 on the Life of your mother Smt. Lakshmidevamma has preferred a death claim at your instance in respect of said policy though actually your mother is alive.
>
> IV. That you have got the death of your mother Smt. Lakshmidevamma (life assured under Policy No. 650577674) registered at Yemmiganur Municipal Office on 27.7.92 though the death was not at all true.
>
> V. That you have got the attestation of Dr. A. Nagaseshappa on the claim Form A. In respect of the said policy through the Life assured your mother Smt. Lakshmidevamma is very much alive.

VI. That you have thus deliberately made attempt to make a false death claim by falsification of all records and thereby attempted to cause financial loss to the Corporation."

By virtue of proceedings dated 29.5.93 Sri N. Narasimha Rao has been appointed as Preliminary Enquiry Officer to conduct enquire into the charges. During the enquiry Petitioner clearly denied all the charges. During enquiry Petitioner was not given reasonable opportunity. Management witnesses were not allowed to be cross examined. Petitioner was only asked to give statement without writing the records. Thus, it is a farce of enquiry. Without considering the Petitioner's explanation and in a mechanical manner the Enquiry Officer held him guilty of charges excepting charges one and six. He was issued with a show cause notice dated 18.9.95. He submitted his comments on the findings of the Enquiry Officer. But, without considering the same, punishment of removal from service was imposed against him by virtue of proceedings dated 19.12.1995. Aggrieved by the same he preferred an appeal to Zonal officer. Without considering the facts the Appellate Authority rejected the appeal. Thus, Petitioner approached this forum. Petitioner got nothing to do with the insurance policies, taken by his parents and payment of premium in respect of the same. The charges framed in this regard are not proved. The enquiry reveals that Petitioner has taken blame upon him to save his father. Dr. N. Nagaseshappa was not examined to prove that Petitioner obtained his attestation. Letter was issued to said Doctor but not to his correct address malafidely. The Enquiry Officer failed to appreciate the evidence on record properly and failed to see that Petitioner got nothing to do with the charges levelled against him and that the confession letter dated 25.9.92 and the affidavit dated 29.9.92 were signed under pressure and coercion by the Marketing Manager, Sri M. Swami Nathan and Manager (Claims), Sri R. Venkatramayya and Sri J. Thayappa, father of the Petitioner. Against the rules an officer who is directly sub-ordinate to Investigation Officer has been appointed as Enquiry Officer. The Enquiry Officer has not fixed the final date of hearing and has not given opportunity to the Petitioner to make his statement and thus violated guideline No. 36 of LIC of India Staff Regulation, 1960. Since removal of the Petitioner from service, he could not secure any alternate employment inspite of best efforts and remained as unemployed. Due to financial problems he could not approach the court immediately. Hence, the petition.

3. **Respondents filed their counter with the averments in brief as follows**:

The contention of the Petitioner that since the beginning he performed the duties to the satisfaction of the superiors is not correct. In the year 1988 he was punished for false LTC claim resulting in reduction in his basic pay by three stages. The charges framed against the Petitioner are correct. There is material available to show that Petitioner himself filled in the data sheets and proposal forms which contain the signature of the proponents i.e., the parents of the Petitioner and obtained policies bearing Nos.650576223 and 650577674 for his father and mother respectively. The letter addressed by Sri S. Mohan Rao, the Development Officer to the Marketing Manager/ Divisional Manager, Life Insurance Corporation of India clarifies the same. It also reveals that Petitioner himself has canvassed for both the said policies. Further he submitted his notarised affidavit dated 28.8.92 before the Divisional Manager, stating that his mother is illiterate and he himself signed in the proposal form for policy No.650577674 on behalf of his mother and further that he himself was paying premia regularly in respect of both policies. It also further stated in this affidavit that at his instance only his father preferred death claim in respect of his mother's policy though she is alive and further that Petitioner himself got the attestation of Dr. A. Nagaseshappa on the claim Form-A, that apart in his letter dated 29.5.92 Petitioner himself has admitted that he made false claim by falsification of records. Though there was procedural lapse of not permitting the Petitioner to cross examine the Management witnesses during the enquiry proceeding, the Central office vigilance department pointed out the procedural lapses and advised the Sr. Divisional Manager to remit back the case to the Enquiry Officer and accordingly the Sr. Divisional Manager directed the Enquiry Officer by letter dated 16.11.1994 to reopen the enquiry proceedings and see that all procedural lapses are taken care of. Thereafter the Enquiry Officer addressed letter dated 22.12.94 to the Petitioner with a view to give him an opportunity to cross-examine the Management witnesses and that he would conduct enquiry at Adhoni from 23.1.95 to 28.1.95 and advising the Petitioner to be present there on those dates. In response to the same Petitioner informed the Enquiry Officer vide letters dated 12.1.95 and 15.2.95 expressing his inability to cross examine the Management witnesses in the absence of a lawyer. The Enquiry Officer in his letter dated 17.3.95 made it clear to the Petitioner that since departmental enquiry is a de and also since the Enquiry Officer as well as presenting officers are not having any legal qualifications it was not possible to allow the Petitioner to engage a lawyer to defend him. However, it has been suggested to the Petitioner that he could take the assistance of any of the employees of the Life Insurance Corporation of India from the branch. But again Petitioner addressed letter dated 15.2.95 to the Enquiry Officer requesting for providing legal assistance. Thereon Enquiry Officer addressed a letter dated 5.5.95 to the Petitioner stating that it was construed that Petitioner was not

interested in further examination of the Management witnesses and that further action in the matter would be taken as per rules. The Enquiry Officer submitted report on 5.5.95 to Sr.Divisional Manager, Cuddapah explaining the said position. In the given circumstances, the allegation that Petitioner was not provided opportunity to cross examine the Management witnesses is not correct. He was provided with ample opportunity to do so but he did not avail the same. The contentions of the Petitioner that without considering the material on record the Enquiry Officer found him guilty of the charges Nos. 2 to 5 while holding the charges Nos. 1 and 6 as not proved and further that without considering the representation made by the Petitioner Disciplinary Authority imposed punishment of removal from service on him are all absolutely baseless and incorrect. The Appellate Authority rightly rejected his appeal. Petitioner could prefer a memorial to the Chairman, LIC after rejection of the appeal. Without availing the said remedy Petitioner approached the court by filing this petition. Therefore, it is liable to be dismissed. Service conditions of the Petitioner are governed by the provisions of Life Insurance Act, 1956 and Life Insurance Corporation of India (Staff) Regulations, 1960. Provisions of Industrial Disputes Act, 1947 have no application to him. As per the principles laid down in the case of A.V. Nachane and another Vs. Union of India (AIR 1988 Supreme Court) page 1126. Thus, this petition is not maintainable and is liable to be dismissed. There is ample evidence on record to prove the guilt of the Petitioner for the charges levelled against him. Non-examination of Dr. A. Nagasesheppa is of no consequence. Attributing motives to the Enquiry Officer is highly illegal and unwarranted. It is an after thought and is untenable. The Enquiry Officer has properly appreciated the evidence on record. Making wild allegations against a responsible officer and his integrity who acted as Enquiry Officer are unwarranted and highly uncalled for. Petitioner miserably failed to establish that the confession letter dated 25.9.92 and the affidavit dated 29.9.92 were signed by him under pressure and coercion from the Marketing Manager, Sri M. Swaminathan and Sri R. Venkatramaiah Manager(Claims) and Sri J. Thayappa, his own father. Thus, the said allegation is devoid of merits and untenable. The punishment imposed against the Petitioner is not disproportionate to the charges levelled against him and proved since the same has been imposed for the proven misconduct. It is not at all disproportionate to the charges proved against the Petitioner. The contention that there is violation of guideline No. 20 is not correct. The other contention that there is violation of guidelines No. 30 and 36 by the Enquiry Officer is also not correct. Petitioner is to be put to strict proof regarding his contention that he is remaining unemployed since his removal from service as he could not secure any alternate employment inspite of his best efforts. This petition is filed after lapse of almost five years from the date of communication of the appellate order. On this ground also it is liable to be dismissed. The financial problems give as reason for delay are concocted for the purpose of this case and they cannot be believed. The domestic enquiry conducted in this case is legal and valid, there is no violation of any regulations or any principles of natural justice. Petitioner is not entitled for reinstatement into service or any consequential benefits. Petition is liable to be dismissed.

4. After hearing both parties regarding the validity of domestic enquiry, this court found the same as invalid by virtue of orders dated 12.12.2001. The said order has been challenged by the Respondent by way of filing WP No. 4300/2002 thereon the Hon'ble High Court of A.P. has stayed the proceedings. The said WP has been dismissed by virtue of order dated 19.1.2011. After receiving the case file from the Hon'ble High Court of A.P., this court has given opportunity to the Respondent to adduce evidence. For Management MW1 to MW5 were examined and Ex.M1 to M30 were marked and on behalf of the Petitioner WW1 was examined and Ex.W1 to W7 were marked.

5. Heard the arguments of either party. Written arguments are also filed for either party and the same are considered.

6. **The points arise for determination are**:

I. Whether the Petitioner is a workman?

II. Whether the impugned order of removal of the Petitioner from service issued by the 2nd Respondent and which was confirmed by the Appellate Authority i.e., 1st Respondent, is liable to be set aside, if so, on grounds?

III. To which relief the Petitioner is entitled for?

7. **Point No. I :**

Petitioner has been working as Higher Grade Assistant with Respondent organisation i.e., Life Insurance Corporation of India as on the date of arising of the present dispute. It is an admitted fact. It is the contention of the Petitioner that he is a workman whereas it is the contention of the Respondent that Petitioner will not come under the purview of the definition of the workman as provided in the Industrial Disputes Act, 1947 since, he has been enjoying the supervisory powers as Higher Grade Assistant of the Respondent organization. Petitioner is denying the truth of the same. While he was under cross-examination as WW1, Petitioner admitted that while he was working in Adhoni branch, there were four assistants one sub-staff and one record keeper working in the said branch. But he

denied the suggestion put to him that those staff members were working under his supervisory control. A suggestion has been given to him that as Higher Grade Assistant, he got power to make payment of claims upto Rs.50000 and death claims upto Rs.25000. He denied the truth of the same. But the fact remains that, as per Ex. M29 and M30 the Higher Grade Assistants are having supervisory powers and they got financial powers upto and including Rs.1 lakh for payment of claims by maturity and upto and including Rs.50000/- as death claims. They also got power of paying capital redemption of Rs.25000/- and sum assured by instalments upto Rs.15000/-, quotations for and payment of loans upto Rs.50000/-, quotations for and payment of surrender value upto Rs.50000/- so on. It means Higher Grade Assistants are the officers of Life Insurance Corporation of India enjoying not only supervisory powers but also financial powers. Such persons can not be termed as workmen as defined in Sec.2(s) of Industrial Disputes Act, 1947. In the given circumstances it can safely be held that Petitioner is not a workman.

This point is answered accordingly.

8. **Point No. II** :

Irrespective of the finding in Point No.I in the interest of comprehensive disposal of this case the material touching this point also is to be analysed and the point is to be decided.

9. Petitioner, who has been Higher Grade Assistant of the Respondent organization has been kept under suspension by virtue of Ex.M9 vide letter dated 26.9.92. M26 and M28 are the documents pertaining to the suspension and payment of subsistence allowance to the Petitioner. A perusal of the record shows that the notarised declaration dt.25.9.92 admittedly made by the father of Petitioner Sri J. Thayappa relinquishing his claim made in respect of Ex.W4, the policy taken on the life of Smt. J. Laxmi Devamma, his wife and who is also the mother of the Petitioner, has been marked twice as Ex.M1 as well as Ex.M8. Ex.M2 to M5 are the documents which were collected during the course of preliminary investigation by MW1, the official who conducted the said investigation. Ex.M6 is the preliminary investigation report in this case. Thereafter by virtue of chargesheet dated 15.12.1992 which is marked as Ex.M7. Ex.M9 is the suspension order. Ex.M10 is annexure to Ex.M9. Ex.M11 is the preliminary enquiry report conducted into the said charges. Ex.M12 to M16 are the enquiry proceedings. Ex. M17 to M22 are the correspondence exchanged between the Enquiry Officer and the Petitioner. Ex.M23 is the enquiry report filed in this case. Ex.M24 and M25 are the impugned orders.

10. From the above referred documents and the oral evidence adduced to prove these documents and other relevant aspects of the case what one can gather is that when it is surfaced that a false death claim has been made in respect of the policy taken on the life of Smt. Laxmi Devamma who is no other than the mother of the Petitioner, though she was alive, investigation was made into the said matter by the Respondent organization appointing MW1 as investigation officer. During the course of investigation MW1 has taken statements of several persons in writing including that of the Petitioner and his father.

11. Ex. M8 (Copy of Ex.M8 is marked as Ex.M1) is the notarised statement/declaration given by Sri J. Thayappa, father of the Petitioner who made the false death claim, being the nominee of Ex.W4 life insurance policy No.650577674 taken in the name of Smt. Laxmi Devamma, reporting that she expired though she was very much alive. In this document said Sri J. Thayappa admitted that the death claim was made by the reported death of said Smt. Laxmi Devamma on 26.7.92 but she is still alive and living with his son at Adhoni at the address stated in this document. He further said that he is relinquishing his claim in respect of the said policy and declared that Respondent corporation is entitled to forfeit and appropriate the same to itself. This document is therefore clarifies that the death claim made by this person is a false claim. But evidently no action has been taken against him by the Respondent organization. Any way it is outside the purview of the present dispute. Ex.M8 is relevant for the purpose of this dispute only to the extent to prove that there has been a false claim made by Sri J. Thayappa the father of the Petitioner on the Life Insurance policy taken by the Petitioner's mother, though she is very much alive. The dispute concerns only the Petitioner. One another aspect which can be gathered from this document is that Petitioner's mother is living with the Petitioner at Adhoni at the relevant time. Ex.M2 and M3 also substantiate the fact that the death claim made in respect of the insurance policy taken in the name of the mother of Petitioner by his father is a false claim.

12. Ex.M5 is the letter dated 25.9.92 given by the Petitioner himself to the Marketing Manager of the Respondent corporation, whereunder he stated that he himself got his parents insured while he was working at Yemmiganur, that he made false claim of his mother getting the claim form filled in attested by Dr. M. Nagaseshappa and that he has done the same out of monetary weakness. He sought for condoning his action and help him to be with the Life Insurance Corporation of India organization in view of his family and children. He owned the entire mistake as his and further stated that he has been making the statement out of his free will.

13. Regarding the above referred confession made by the Petitioner, he is claiming now that the said statement

was not given by him out of his free will and that being under coercion and pressure from MW1 and one Subbaiah, the said statement was given by the Petitioner. A suggestion has been put to MW1 while he was under cross examination that being under pressure of MW1 and one Subbaiah, Petitioner has given Ex.M5 statement, which he denied. A fact to be noted is that nature of the pressure said to have been applied by MW1 to the Petitioner is not confronted to MW1 and therefore there is no opportunity for him to know regarding the same and to defend himself. It is only a vague suggestion put to MW1 that he pressurised the Petitioner. That apart, as can be seen from Ex.M11 and M12, the preliminary enquiry proceedings, the Preliminary Enquiry Officer has elaborately examined the Petitioner during Preliminary enquiry. He was also examined during the departmental enquiry. While so, he claimed that his mother was not residing with him whereas, as already discussed above, as per Ex.M1, it is the claim of the father of the Petitioner that, Petitioner's mother has been residing with the Petitioner at Adhoni.

14. Further, the contents at page No.5 of Ex.M12 reveal that Petitioner has admitted that data sheets pertaining to the life insurance policies taken in the names of his father and mother were filled in, in his own handwriting. He claimed that he has done so, to the dictation of Mr. Mohan Rao, the Marketing Manager. This is an improbable version for the reason that, when he himself filled up the particulars of his own parents in the data sheets, he will have every understanding of the fact that the policies were taken in the names of his parents.

15. Further more, regarding relations existing between the Petitioner and his parents he gave different-different versions during the enquiry proceedings. Further, contents of page No.4 of Ex.M12 disclose that, 3 days after Ex.M5 dated 25.9.92 was given, Petitioner himself has given the similar letter before the notary and further he signed an affidavit on 28.9.92 and evidently at that time there was no pressure applied on him by anybody. The explanation given by the Petitioner for this conduct is available on the same page of Ex.M12. It is to the effect that since he was given an impression that if confession is made the corporation would consider his case in sympathy he has done so. But, it is not his claim that the confession given by him was not correct.

16. One another important aspect to be noted while considering the contention of the Petitioner that being under pressure and coercion from the officers of the Respondent corporation he has made the said confession, is that at no point of time Petitioner ventured to make any complaint against the said officers to any of their superiors claiming that they applied pressure and coercion on him and obtained his confession. If actually he was under pressure and coercion at the time of making his confession, soon after he became free from the same he would venture to take all possible steps to annul the said confession being aware of the consequences of the said confession.

17. One another important circumstance to be noted is that as per the contents of Ex.M12, the officials of the Respondent told the Petitioner at the time of making confession that the Respondent organization would treat his case with sympathy if he made his confession. It is the contention put forth for the Respondent that actually, the case of the Petitioner was considered sympathetically and for that reason only instead of dismissing him from service, he was merely removed from service.

18. When the material on record is considered together, what one can understand is that with the fond hope and understanding that if he made his confession, the Respondent corporation would consider his case with sympathy only the Petitioner made his confession and it is a true confession made by him and it is a confession made by him out of his free will and further that his contention that being under pressure and coercion from the officials of the Respondent he made such confession is far from truth.

19. The Enquiry Officer has considered the confession made by the Petitioner in the light of elaborate enquiry made with him; during enquiry and also all other relevant record produced before him and came to the conclusion that Petitioner is guilty of the several of the charges laid against him.

20. It is the contention of the Petitioner that non-examination of Dr. N. Nagaseshappa inspite of his request to examine him during enquiry is to be considered against the Management and disciplinary proceedings. But, perusal of the record indicates that irrespective of non-examination of said doctor there is ample evidence adduced on record which can point out towards guilt of the Petitioner only.

21. One another aspect to be considered is that it is the contention of the Petitioner that he has not been given due opportunity to cross examine the Management witnesses during the enquiry by allowing him to engage his advocate. The record discloses that for the reason that neither the Enquiry Officer nor the Presenting Officer were law graduates Petitioner was denied the legal assistance during the enquiry. In such circumstances Management is correct in disallowing the plea of the Petitioner to permit him to take the assistance of an advocate. But in any view of the matter, in the present proceedings Petitioner got opportunity to get the Management witnesses cross-examined with the advocate. Inspite of getting them cross-examined at length he could not get elicit anything which

can discredit their respective evidence. Further more, there is ample documentary evidence available on record, which is enough for a reasonable and prudent person to come to a conclusion that Petitioner has been guilty of various charges levelled against him.

22. As can be seen from Ex.M23, the Enquiry Officer has found charges No.1, 3 and 4 as not proved and the other charges as proved. But while giving these findings the Enquiry Officer has made some observations, regarding the conduct of Petitioner in connection with this charges. When the said observations are read together with said finding, one can understand that the Enquiry Officer has not held the charges No. 1 and 3 levelled against the Petitioner as absolutely not proved. He answered these charges by making his observations. When these answers are perused, one can understand that the conduct of the Petitioner in connection with the insurance policies taken in the names of his parents and the false death claim preferred in respect of his mother, is blame worthy.

23. The record discloses that after making an elaborate preliminary investigation and department enquiry and after giving due opportunity to the Petitioner and in due consideration of the evidence gathered on record the findings were arrived at finding the Petitioner is guilty of grave misconduct.

24. After giving due opportunity to the Petitioner the Disciplinary Authority has awarded the punishment to him. Considering the gravity of the charges levelled and proved against the Petitioner and also his past record on can see that the punishment of removal from service awarded to him is not at all disproportionate.

25. In the given circumstances, the impugned order of removal of the Petitioner from service issued by the 2nd Respondent and which was confirmed by the Appellate Authority i.e., 1st Respondent, does not warrant any interference.

This point is answered accordingly.

26. **Point No. III :**

In view of the Point No.I as well as Point No.II Petitioner is not entitled for any relief.

Result :

In the result petition is dismissed.

Award passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant and corrected by me on this the 30th day of January, 2014.

M. VIJAYA LAKSHMI, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
WW1: Sri J.S. Chandra	MW1: Sri M. Swami Nathan
	MW2: Sri S.K.V. Subbaiah
	MW3: Sri B.T. Prasad
	MW4: Sri N. Narasimha Rao
	MW5: Sri C.K. Ravi Kumar

Documents marked for the Petitioner

Ex.W1	:	Photostat copy of challan
Ex.W2	:	Office copy of representation of WW1 dt.29.1.94 to Enquiry Officer
Ex.W3	:	Office copy of notice issued to Sri M. Nagasheshappa dt. 1.2.94
Ex.W4	:	Photostat copy of proposal form of insurance policy of Smt. Laxmi Devamma
Ex.W5	:	Photostat copy of representation of WW1 dt. 18.1.1993
Ex.W6	:	Photostat copy of order passed in WP No. 4300 of 2002
Ex.W7	:	Photostat copy of order passed in WA No. 1299 of 2011 dt. 3.4.2012

Documents marked for the Respondent

Ex.M1 & M8	:	Notarised declaration sworn by J. Thayappa
Ex.M2	:	Lr. Dt. 24.9.92 by Smt. S.G. Bhagirathamma
Ex.M3	:	Lr. Dt. 24.9.92 by K. Venugopal,
Ex.M4	:	Lr. Dt. 24.9.92 by Dr. M. Nagaseshappa
Ex.M5	:	Lr. Dt.25.9.92 by J. Shaikh Chandra
Ex.M6	:	Report of Preliminary Investigation dt. 26.9.1992
Ex.M7	:	Chargesheet issued dt.15.12.1992
Ex.M9	:	Office copy of Order dt.26.9.1992
Ex.M10	:	Annexure to M9
Ex.M11	:	Preliminary enquiry report dt.16.6.93
Ex.M12	:	Enquiry proceeding dt.30.11.1993
Ex.M13	:	Enquiry proceeding dt.27.1.94
Ex.M14	:	Enquiry proceeding dt.28.1.94
Ex.M15	:	Enquiry proceeding dt.9.2.1994
Ex.M16	:	Enquiry proceeding dt.10.2.94
Ex.M17	:	Office copy of Lr. Dt. 22.12.94 by Enquiry Officer to WW1
Ex.M18	:	Letter from WW1 to Enquiry Officer dt. 12.1.1995

Ex.M19 : Office copy of lr. dt. 27.1.95 by Enquiry Officer to WW1

Ex.M20 : Office copy of lr dt. 18.1.95 by Enquiry Officer to WW1

Ex.M21 : Telegram dt.18.1.95

Ex.M22 : Office copy of reply by WW1 dt. 15.2.1995 to the lr. Dt. 27.1.95 by Enquiry Officer

Ex.M23 : Enquiry report dt. 21.5.94

Ex.M24 : Photostat copy of Removal order dt. 19.12.95

Ex.M25 : Photostat copy of order by Appellate Authority dt.4.10.1996

Ex.M26 : Photostat copy of order dt. 20.2.1996

Ex.M27 : Authorization letter issued to Sri Ch. Ravi Kumar

Ex.M28 : Office copy of letter issued to WW1 dt. 5.4.93 reg. verification of staff Regulations 1960 etc.

Ex.M29 : Photostat copy of Staff regulations

Ex.M30 : Photostat copy of Extract of Chapter II relating to financial powers of Higher Grade Assistants.

नई दिल्ली, 4 अप्रैल, 2014

का.आ. 1230.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भिलाई स्टील प्लांट के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 16/95) को प्रकाशित करती है, जो केन्द्रीय सरकार को 1-04-2014 को प्राप्त हुआ था ।

[सं. एल-29012/75/94-आईआर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 4th April, 2014

S.O. 1230.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No.16/95) of the Central Government Industrial Tribunal/Labour Court, Jabalpur, now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Bhilai Steel Plant and their workman, which was received by the Central Government on 1/04/2014.

[F. No. L-29012/75/94-IR(M)]

JOHAN TOPNO, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

No. CGIT/LC/R/16/95

PRESIDING OFFICER : SHRI R.B.PATLE

Shri Asharam, Kelabari,
Camp-I, Post Dallirajhara,
Distt. Durg ... Workman

Versus

General Manager,
Bhilai Steel Plant,
Bhilai, Durg

M/s. R.K.Transport Company,
Contractor,
Foolgaon Naak,
Durg .....Managements

AWARD

(Passed on this 18th day of February 2014)

1. As per letter dated 12-1-95 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-29012/75/94-IR(Misc). The dispute under reference relates to:

> " Whether the action of the management of M/s. R.K.Transport Co., outgoing contractor, in refusing employment to Shri Asha Ram is justified? If not, to what relief the workman is entitled to?"
>
> And
>
> "Whether in the case of reinstatement of the workman, the responsibility lies with the management of Bhilai Steel Plant to get the workman reinstated through incoming contractor taken in the place of M/s. R. K.Transport Company?"

2. After receiving reference, notices were issued to the parties. Ist party workman submitted statement of claim at Page 2/1 to 2/3. The case of workman is that he worked as Transport Loader till 1980. Thereafter he was employed as truck helper. Even though his designation was Truck Helper, he was employed as truck driver continuously from 1983. He was holding valid heavy vehicle driving licence. That there had been contracts and procedure of Bhilai Steel Plant. That it was obligatory on part of outgoing contractor to pass on a comprehensive life their transport workers to the incoming contractor. Workman further submits that during employment under M/s. B.R.Jain and company, he was intermittently deprived work. His wages and other dues were not paid for period 5-8-92 to 23-8-96. That at pressure of C.M.S.S.Union to remove him from work and not to pay his wages, he had also initiated industrial dispute dated 19-7-93 before ALC, Raipur. Order under Section 21(4) Contract Labour (Regulation and Abolition) Act, 1970 by

the ALC, Raipur to clear my outstanding dues. The said order was not complied with by the Principal Employer. Workman further submits that on completion of contract of M/s. B. R. Jain and Company, incoming contractors R.K.Transport Company, he and other co-workers started work as per earlier practice. However his wages for two months were not paid. Workman further submits that R.K.Transport Company abandoned their work half way. Next incoming contractor M/s. Mahavir Traders contractor had taken over the work. M/s. Mahavir did not employ him on work on the ground that due to pressure of CMS Union he was told to settle the matter with Union. That he had also correspondence with Principal Employer. Workman on such ground submits that he is entitled for full back wages and benefits, reinstatement in employment.

3. IInd party filed Written Statement at Page 11/1 to 11/6 denying claim of workman. IInd party submits that M/s. R.K.Transport Company and M/s. CMD, Bilaspur are party to the dispute. However the workman in statement of claim has impleaded M/s. B.R. Jain, Mahavir Traders, M/s. Dilip Construction. Impleading Non-applicants No.2 to 5 is not proper and legal. It is further submitted that workman was a contractual worker. He had worked under different contractors having B-Form No. 251 TD No. 1460 as per provisions under Mines Act, 1952. That he was not engaged by IInd party No.1. Rather he was engaged by different contractors who were awarded transport contract by the management of Bhilai Steel Plant. That terms and conditions of service like pay and allowance were paid by the contractor employer. There is no relationship of employer-employee between the workman and IInd party no.2. IInd party denies that the incoming contractor is under obligation to employ the workman engaged by the outgoing contractor. That IInd party No.2 used to see implementation of the payment of wages, Minimum Wages Act by contractor. It is submitted that the IInd party No.2 had received correspondence from contractor that the workman was absent from duty despite of letter dated 26-11-93. The workman did not attend duty. The workman is not entitled to relief claimed by him.

4. IInd party M/s. Mahavir Traders filed Written Statement at Page 12. It is contented that said contractor is not party. It is wrongly included in the reference. Despite of the notices issues to the R.K.Transport, it has not caused appearance in the proceeding.

5. Workman filed rejoinder at Page 18/1 to 18/3 reiterating his contentions in Statement of Claim.

6. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

"(i)	Whether the action of the management of M/s. R.K. Transport Co., outgoing contractor, in refusing employment to Shri Asha Ram is justified?	In Affirmative
(ii)	Whether in the case of reinstatement of the workman, the responsibility lies with the management of Bhilai Steel Plant to get the workman reinstated through incoming contractor taken in the place of M/s. R.K.Transport Company?	In Negative
(iii)	If not, what relief the workman is entitled to?"	Workman is not entitled to relief claimed.

REASONS

7. As per terms of reference, the controversy between parties relates to refusal of employment to workman by outgoing contractor M/s. R. K.Transport and whether Principal employer Bhilai Steel Plant is responsible for reinstatement of the workman. Affidavit of evidence of workman is filed. Workman has stated that he was working as Truck Loader during 1975-76. That his services are terminated without notice from 3-9-93. During 1982-83, he was working as Truck Loader and thereafter he was working as Truck Driver till 1993. However he was working under different contractors. Other persons working with him have been departmentalized in Bhilai Steel Plant. The work of driver was extracted from him but his designation was Helper. The affidavit of evidence of workman is silent about the customer contracts that the employees engaged by outgoing contractor were continued without break with the incoming contractor. Workman in his cross-examination says that CPF deducted were made from his pay, he claims ignorance about EPF that R.K.Transport was a contractor of Bhilai Steel Plant. He had received letter from R.K.Transport. He had worked with said contractor till 3-9-93. Thereafter he was on leave after two months, letter was issued. He denies that even after receiving letter, he was not reported to work. In his further cross-examination, workman says that he was discontinued without reason. He denies that Bhilai Steel Plant had issued letter dated 26-11-93 for returning to work. After re-examination document Exhibit B-1 is admitted in evidence. Letter Exhibit W-1 shows that the experience certificate is issued to workman by M/s. B.R. Jain and Company. It also bears counter seal of the Welfare Officer and Dalli Mines.

8. Management filed affidavit of evidence of its witness Mahadev Narayan Rao supporting contentions of IInd party no.2. That there was no employer- employee relationship between workman and Bhilai Steel Plant. Workman was engaged by contractors. That on 23-10-93, workman had written letter to Mines Manager Dalli Mines regarding non-payment of salary for month of September 1993 by R.K.Transport Company.

9. The terms of reference does not include non-payment of wages to the workman. The pleadings and evidence on the point of non-payment of wages by both the parties is beyond the terms of reference and therefore needs no detailed consideration. Management's witness in his cross-examination admits that labours of contractors are examined by Medical Officer and declared fit or unfit for work. The suggestion is denied by witness that workman is removed by IInd party. He admits that there is no document produced about the workman was engaged by R.K.Transport. The document Exhibit W-1 shows that certificate was issued by contractor M/s. B.R. Jain. It corroborate evidence of management's witness that workman was not engaged by Bhilai Steel Plant. The evidence discussed above clearly shows that workman was not engaged by Bhilai Steel Plant. There was no employer-employee relationship. The pleading and evidence of workman is silent how the Bhilai Steel Plant is responsible for reinstatement of the workman. R.K.Transport has not participated in the reference proceeding. The evidence of workman is not clear and cogent about termination of his services by R.K.Transport. The evidence is not cogent about the workman completing 240 days service with R.K.Transport, Contractor. Therefore the violation of Section 25-F of I.D.Act cannot be established. For above reasons, I record my finding in Point No. 1 in Affirmative, Point No.2 in Negative.

10. In the result, award is passed as under:-

(1) Workman has failed to prove that R.K.Transport refused his work. The workman is not entitled for reinstatement through contractor R.K.Transport in Bhilai Steel Plant. The reference is answered against workman.

R. B. PATLE, Presiding Officer

नई दिल्ली, 4 अप्रैल, 2014

का.आ. 1231.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार राष्ट्रीय इस्पात निगम लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 42/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 11-02-2014 को प्राप्त हुआ था ।

[सं. एल-15025/01/2014-आईआर (एम)]
जोहन तोपनो, अवर सचिव

New Delhi, the 4th April, 2014

S.O. 1231.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 42/2007) of the Central Government Industrial Tribunal/Labour Court, Hyderabad, now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Rashtriya Ispat Nigam Limited and their workman, which was received by the Central Government on 11/2/2014.

[No. L-15025/01/2014-IR(M)]

JOHAN TOPNO, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

Present : Smt. M. VIJAYA LAKSHMI, Presiding Officer

Dated the 3rd day of January, 2014

Industrial Dispute L.C. No. 42/2007

Between:

Sri G. Trinadha Reddy,
D.No. 467-11,
Bhagivari Street, Dondaparthy,
Visakhapatnam ...Petitioner

AND

The Managing Director,
Rashtriya Ispat Nigam Limited,
Visakhapatnam Steel Plant,
Water Management Department,
Visakhapatnam ...Respondent

Appearances:

For the Petitioner : M/s. A. Sarojana & K. Vasudeva Reddy, Advocates

For the Respondent : M/s. V. Ravinder Rao, S. Nayana Goud & Ramjoshi, Advocates

AWARD

This is a petition filed by Sri G. Trinadh Reddy, Ex. Technician of respondent (Workman) invoking Sec.2A(2) of the Industrial Disputes Act, 1947 seeking for declaring the order of the respondent No.WK/WMD/109234/2130

dated 29.11.2006 whereunder the workman has been removed from service, as illegal, arbitrary and contradictory to the provisions of law and consequently directing the respondent to reinstate the workman into service with back wages, continuity of service and all other attendant benefits.

2. **The averments made in the petition in brief are as follows :**

The workman was appointed on 22.10.1988. He was removed from service on 29.11.2006 with baseless allegations. A charge sheet has been issued against him alleging that he committed theft of the company's property with dishonest intention and fraudulently and further that he failed to maintain absolute integrity. These are all false and speculative charges. The charge sheet itself is defective and it prejudges the entire issue even before calling for explanation of the workman and the enquiry was reduced into empty formality. The enquiry officer was very keen in observing the contradictions in the defence while ignoring serious contradictions in the Management's case and erroneously held the workman as guilty. The enquiry officer has not approached the case in objective manner. There are serious contradictions in the depositions of MWs 4, 7 and 8 regarding the purported transactions of loading metallurgical coke in private dumpers the same raises doubt against veracity of the witnesses. Sri P.N.A. Naidu a material witness has not been examined. Sri M. Govidna Rao and Sri Rehman are also material witnesses, they also have not been examined. The conclusions drawn by the enquiry officer are perverse. The workman is unconcerned with the loading and unloading of the material and he does not know about the contract in between steel plant and private contractor. He is not guilty of the charges. He was sincere in discharging his duties except his salary he got no other income. He got neither movable nor immovable properties. The investigation made by the CBI officials establish the same. Hence, the petition.

3. **Respondent filed his counter with the averments in brief as follows :**

Enquiry was conducted against the workman duly following the procedure. The punishment awarded for the grave misconduct of the workman is reasonable. His contentions that he was removed from service on baseless allegation is not correct. Respondent received a communications dated 22.7.2003 from Central Bureau of Investigation stating that a Criminal Case No.20(A)2003 dated 18.7.2003 has been registered against the workman under Sec.120-B, 420,477-A of IPC and Sec.13 (2) read with 13(1) of Prevention of Corruption Act for committing an offence of theft of metallurgical coke. On such information the Deputy Chief Manager(T) of Water Management Department being the Disciplinary Authority issued an order dated 23.7.2003 placing the workman under suspension pending further proceedings in terms of clause 31.1 of Certified Standing Orders of the company. Since the information received against the workman from CBI reveals misconduct prima facie disciplinary proceedings initiated and charge sheet dated 9.8.2005 has been issued to the workman. The misconduct noticed is referable under clause 27.25, and clause 27.65 read with clause 7.9(i) of the Standing Orders. The said clause read as under:

> "7.9
> Every employee shall at all times,
>
> (i) Maintain absolute integrity.
>
> 27.25
> Theft, fraud or dishonesty in connection with the company's business, affairs or operation or property or of the property entrusted by the company.
>
> 27.65
> Any act which constitutes violation of any of these Standing Orders".

The contention of the workman that charge sheet has been the conclusion drawn by the Disciplinary Authority and it speaks prejudging the entire issue even before calling for explanation is false and baseless. For the charge sheet the explanation dated 18.8.2005 has been submitted by the workman. Neither in this explanation nor at any time during the course of enquiry the workman has complained that the charge sheet is in the nature of prejudging the issue. Without any demur he participated in the enquiry and availed the opportunity afforded. Thus, his contention that the enquiry was reduced to an empty formality is incorrect. Perusal of the enquiry report reveals that enquiry was conducted in unbiased and balanced manner. The workman has submitted written arguments before the enquiry officer and in it also he never has complained that the matter has been prejudged. The allegation relating to illness of the workman's daughter is an after thought. It was never raised during the course of enquiry. The calls made by the workman and other relevant persons from their mobile phones were duly considered by the enquiry officer. There are no contradictions in the evidence of MWs No.4,7 and 8 regarding loading of metallurgical coke on the instructions of workman, payment of Rs.500/- to MW4 in the presence of the workman at the site when the loading operation took place. No witnesses were examined as DW7 and 8. Workman has examined only four witnesses i.e., DWs No.1 to 4. It is established beyond reasonable doubt that the mobile phone in question belonged to the workman and he made calls to certain persons relevant/connected to the misconduct/theft committed. Workman also received calls from such persons. Material evidence on record clearly establish that the workman and his brother Sri G. Murali Krishna Reddy were involved in the unauthorized coke business by diverting

the same from the coke stock yard. Whether the workman being in possession of movable or immovable property has been revealed during the investigation by the CBI is not relevant to the charges framed against the workman. The question relevant is whether the evidence let in by the presenting officer during the course of the enquiry established misconduct of the workman. The workman was afforded due opportunity by following principles of natural justice. Subsequent to the impugned order of removal of workman from service workman submitted duly signed final settlement forms for payment of final settlement which has been paid to him. It amounts to acceptance of the order of removal. The petition is liable to be dismissed with exemplary costs.

5. After hearing both parties regarding validity of domestic enquiry by virtue of order dated 16.6.2010 this forum held that the domestic enquiry conducted in this case is legal and valid.

6. Heard the arguments of either party under Sec.11(A) of the Industrial Disputes Act, 1947. Further for respondent its represented that written arguments filed for them at the time of hearing regarding validity of domestic enquiry are to be considered as arguments under Sec.11(A) of the Industrial Disputes Act, 1947 and the same are considered.

7. **The points arise for determination are**:

I. Whether the impugned order dated 29.11.2006 removing the workman from service is legal and valid?

II. Whether the workman is entitled for relief of reinstatement into service and other consequential reliefs sought for?

III. To what relief the workman is entitled for?

8. **Point No. 1 :**

The workman is attacking the impugned order mainly on the ground that the charge sheet is appearing to be a conclusion of the Disciplinary Authority and speaks prejudging the entire issue even before calling for the explanation of the workman. To verify whether this contention is correct or otherwise, charge sheet is perused. On such perusal, it is found that this contention is not at all sustainable. The charge sheet contains only allegations and basis for the said allegations is supplied to the Petitioner in annexure-1, annexed to the charge sheet. Thus, the contention of the workman that charge sheet itself is a conclusion of the Disciplinary Authority and it speaks prejudging the entire issue, cannot be accepted.

9. It is the other contention of the workman that the entire issue is prejudged and enquiry has been reduced as an empty formality as can be seen from the manner in which it was conducted. To verify the correctness or otherwise of this contention, the enquiry proceedings produced before this court have been perused, apart from perusing the enquiry report. As can be seen from the same at every stage of the enquiry proceeding the workman has been given due opportunity to participate. There is no violation of principles of natural justice in this case. The workman has elaborately cross examined all the witnesses examined for the Management. Further, he was given opportunity to place his defence evidence and he examined five witnesses in all as DWs 1 to 5. A perusal of the enquiry report clearly shows that not only the evidence of Management but also that of the defence was duly considered by the enquiry officer while arriving at, his findings. Therefore, the contention of the workman that the enquiry conducted in this case is reduced to an empty formality, can not be accepted.

10. Not only the salient features of the evidence of Management but also that of the defence of the workman and further the respective arguments of the Management as well as workman were duly considered by the enquiry officer, as can be seen from the material on record. It can be seen that the findings of the enquiry officer are not at all pervert. Considering the evidence which could be brought on record against the workman the said findings can not be taken as unsubstantiated. There is ample evidence brought on record regarding the involvement of the workman in the theft and fraud committed against the Management. If some other persons are also involved in the same, and some other crucial evidence also available but the same was not brought on record like the evidence of Sri P.N.A. Naidu, the same will not exonerate the workman, when the evidence already made available on record is sufficiently establishing his guilt. The question to be gone into is whether the findings given against him by the enquiry officer are not having any support from the evidence made available on record. As already observed above, a perusal of the material on record clearly discloses that there is sufficient evidence available on record which can give raise to a finding that the workman is guilty of the fraud, theft and misconduct alleged against him. The evidence adduced on record for Management is independent and dispassionate in nature. This can be said so since, as can be seen from the record it is not the contention of the workman that either of the witnesses examined for Management got any personal grudge against the workman.

11. There is ample evidence against the workman made available on record which bring home his guilt. This evidence has been dispassionately considered by the enquiry officer in the light of various contentions raised for the defence of the workman and after scrutinizing and analyzing the same, came to the conclusion that the

workman is guilty of the charges leveled against him. The contention of the workman that the contradictions in the evidence of Management have been ignored by the enquiry officer is not correct. What ever contradictions which are there, they have been considered duly. The contentions raised by the workmen during the course of enquiry have been duly enumerated and have been dealt with in the enquiry proceeding. The various circumstances like the mobile call details secured in this case and the persons among whom the calls were made were all duly considered. There is direct evidence adduced on record regarding involvement of the workman in the incident of theft. The witnesses have duly identified him. The contentions raised contra are not correct. Thus, the findings of the enquiry officer do not warrant any interference.

12. The findings arrived at by the enquiry officer are supported by due reasons, as can be seen from the enquiry report. The statement of the witnesses recorded in the presence of the workman during the course of domestic enquiry alone were considered by the enquiry officer while coming to various conclusions in the enquiry. Therefore, the principles laid down in the cases of Valli Kumari (2010) 2 SCC 497 and A C Ravindran Vs High Court of A.P. 2011(2)ALD 275 (Division Bench)", relied upon by learned counsel for the workman are not helpful to his case. As can be seen from the enquiry report statement of any witness recorded during the preliminary enquiry has not been relied upon while drawing conclusions in the matter therefore, the principles laid down in the case of "Champaklal,Vs. Union of India reported in AIR 1964 SC 1854" relied upon for the workman is also not applicable to the facts of this case. One can not dispute with the principle that once regular enquiry is held, the preliminary enquiry loses its importance and evidence adduced during preliminary enquiry can not be used in regular enquiry. That does not mean the evidence gathered during preliminary enquiry can not at all be brought on record during regular enquiry. It can be brought on record by proving the facts regarding which the said evidence pertains, afresh in the presence of the charged employee. In present case, what ever evidence which is brought on record during the course of the enquiry and in the presence of the workman alone has been considered by the enquiry officer for arriving at various conclusions in his enquiry report. Thus, the principles laid down in the cases of "Narayana Dattatreya Ramathirtakar Vs. State of Maharashtra reported in (1997) 1 SCC 299 and Nirmala J Jala Vs. State of Gujarat reported in 2013 (4) SCC 301", relied upon for workman are also not applicable to the facts of this case.

13. As can be seen from the material on record after receiving the enquiry report, the Disciplinary Authority has supplied copy of the same to the workman and called for his remarks. The workman submitted his remarks dated 5.12.2006. Thereafter, the impugned punishment order dated 29.11.2006 has been passed by the Disciplinary Authority, removing the workman from service. This order is clearly showing that the Disciplinary Authority has gone through the entire record and considering the grave nature of the charges which are established against the workman, passed the impugned order.

14. The charges leveled against the workman and which are proved against him clearly establish a very grave misconduct. As per said established charges the workman has committed theft of the property of the Management by playing fraud. It amounts to grave misconduct. For such fraudulent behaviour removal of the workman from service is a very much appropriate punishment. Therefore, it can not be said that the punishment awarded is in any way disproportionate to the charge proved against the workman.

15. In view of the fore gone discussion it can safely be held that the impugned order dated 29.11.2006 is legal and valid and is not liable to be interfered with in any manner.

This point is answered accordingly.

16. **Point No. II :**

In view of the finding given in Point No.I workman is not entitled for any of the reliefs sought for.

This point is answered accordingly.

17. **Result :**

In the result petition is dismissed.

Award passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant and corrected by me on this the 3rd day of January, 2014.

M. VIJAYA LAKSHMI, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
NIL	NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 4 अप्रैल, 2014

का.आ. 1232.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एस.बी.आई. लाइफ इन्शुरेन्स कंपनी लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, धनबाद के पंचाट (संदर्भ संख्या 19/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 1-4-2014 को प्राप्त हुआ था ।

[सं. एल-17012/30/2012-आईआर (एम)]
जोहन तोपनो, अवर सचिव

New Delhi, the 4th April, 2014

S.O. 1232.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 19/2012) of the Central Government Industrial Tribunal/Labour Court No. 2, Dhanbad, now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of SBI Life Insurance Company Limited and their workman, which was received by the Central Government on 1/4/2014.

[No. L-17012/30/2012-IR(M)]

JOHAN TOPNO, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

PRESENT : SHRI KISHORI RAM, Presiding Officer

In the matter of an Industrial Dispute under Section 10(1)(d) of the I.D. Act, 1947.

Reference No. 19 of 2012

Parties : Shantanu Gupta (workman)

C/o SBI Life Insurance Company, Mumbai C/o Investment Point, North Office Para, Doranda, Ranchi

V/s.

the SBI Life Insurance Co. Ltd., Western Express Highway Junction, Andheri (East), Mumbai

Appearances :

On behalf of the Workman/Union	:	Mr. Shantanu Gupta (workman himself)
On behalf of the Management	:	Sh. Sanjay Prakash, Area Manager/Management's Rep.

State : Jharkhand Industry : Banking/Insurance

Dhanbad, Dated the 24th February, 2014

AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Sec. 10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-17012/30/2011-IR(M) dated 13.3.2012.

SCHEDULE

"Whether the action of the Management of SBI Life Insurance Co. Ltd., Mumbai in terminating the services of Shri Shantanu Gupta vide letter dated 5.8.2008, is legal and justified? What refief the workman is entitled to?"

On receipt of the Order No.L-17012/30/2011-IR(M) dated 13.03.2012 of the above mentioned reference from the Government of India, Ministry of Labour,New Delhi for adjudication of the dispute, the reference Case No. 19 of 2012 was registered on 27th March,2012 and accordingly an order to that effect was passed to issue notices through the Registered Posts to the parties concerned, directing them to appear in the Court on the date fixed, and to file their written statements along with the relevant documents. In pursuance of the said order, notices by the Registered Posts were sent to the parties concerned.

Both the parties made their appearances personally and filed their pleadings and photocopies of their documents. The workman and the O.P./Management through Area Manager both appeared in the case, and personally contested all along under Section 36(3) of the I.D.act, 1947.

2. The case of petitioner workman Shantanu Gupta as set forth in his written statement is that he was appointed and designated as Manger Bancassurance in the grade of Manager (MS) as per the letter of appointment No. HR/H-8/123/AG/763 dt.March, 12, 2007, issued by the Senior Manager- Talent Acquisition SBI, Life Assurance Co.Ltd subject to the terms and conditions as laid down therein. His appointment was effective from the above date. He was initially posted at Bhagalpur, later on as per the E-mail instruction received on Aug., 7, 2008 from the Regional Head. Central Region, he was temporarily deputed to Patna Office effectively from Aug, 3,2008.Promotion and expansion of insurance business by coordinating with the designated officials of the various Branches of the State Bank of India under Bhagalpur Module in Bihar and Jharkhand was the main job of the workman. As he had neither administrative nor financial nor decisive powers over any one associated with him in the interest of the organization, his job in its nature was purely clerical.

3. Further it is alleged by the workman that in the month of October,2007,though the Management of the company tried its level best to remove him by levelling

charges, as also to question his integrity against him, he proved the allegations as false.Mr.Yogesh Sharma, the Regional Manager, Delhi Circle, began to nurture malice against him, so Mr. Sharma would visit Bhagalpur on tours, would orally persuade him for his resignation on the ground of non-performance .Mr. Sharma would mentally torture him daily .Again on April,10,2008,Mr.Sharma on his visit to Deoghar accordingly but orally persuaded him for his resignation ,failing which he would recommend his superiors for his termination, but the workman again pleaded not guilty. The Company as per its letter dt.May,27,2008 extended his service up to August 12,2008,while on probation for more than one year, but it unresponded to his letter dt.June 6,2008 for its justification. On June 26,2008,his previous Reporting Officer Mr.Yogesh Sharma through an email instructed the workman to recover Rs,.27, 097 from Mr. Manish Raj, as Mr. Raj had received three months' salary even after his resignation in March,2008,alleging against the workman to have not intimated anyone of Mr. Raj's resignation.Mr.Yogesh Sharma and Amresh Kumar under the instruction of Ms.Debasree Verma,the Regional Head, Central Region, harassed him to recover the dues. Whereas in reality, the workman had intimated Mr.Yogesh Sharma in Patna and Mr.Laloyd Monterio in Mumbai in March, 2008 by fax respectively and on June 26, 2008 itself, the Management of the company had recovered the dues (statement of Manish Raj attached).The another attempt of the company to malign the workman turned out its own frustration. At last, he was called upon at Patna for his deputation there as per the email dt.Aug. 7, 2008 of the Regional Head Central Region, Patna, and at his presence, he was orally told to hand over his laptop to the Regional Head of the Company, who instructed him to accept his termination letter dt. Aug 5, 2008, which was eventually sent by speed post, as he had refused it. Though he appealed against it to the MD and the CEO of the Company, it was ineffective. The issuance of a cheque by the Management for Rs.15, 833 towards the payment of one month's basic salary in lieu of the notice period is again the violation of the provision u/s 25 F of the Industrial Dispute Act, 1947. The Management's withholding of his performance appraisal report to his Reporting Officer Mr. Sharma for more than 240 days in a year since his joining deprived him of confirmation of service. The abrupt termination of his service by the Management before the end of his extended service up to Aug.2008 as per its own letter dt.May 27,the same year, as contrasted with its own statement for a decision about his confirmation under review denotes its sharp keenness in his termination malafide. As such the action of the management in terminating him on ground of alleged misconduct under para 9 (a) to (d) of the Service Rule of the Company was biased and ex-parte,as it was without a charge sheet, any domestic enquiry, and any opportunity for his defence,against the theory of natural justice as well as violation of the provision under Sec. 25- F of the Act.

4. Irrespective of the aforesaid repetitions, the workman in his rejoinder with categorical denials has stated that he had not any kind of powers except forwarding the leave details of his subordinates, scrutinizing the subordinates' tour bills and forwarding the same to his immediate Reporting Officer. He had neither Managerial nor supervising power to insure an acceptance of his views even from the lowest designated in discharge of his job of promotion and expansion of the Company's business. As to the training aspect of his job, there was a separate Trainer assigned for imparting training to the Officials of SBI.The Training Manager would report to the Zonal Training Manager of all practical purposes, Position profile as in Annexure D indicates his main job nature purely as manual and clerical. His few jobs of supervisory nature do not debar him from being a workman as defined under the I.D.Act.He was merely a sales promoter as per the instructions of the DGM, the AGM and BM of the Branches of the Company for mobilization of business. His overall job nature and the one of a Development Officer in the LIC was similar to mobilization of business. Only no designating someone as Manager and paying him Rs. 36,922 per month, but the nature of his duties determines the employee as Manager or not. Besides, the reference as per the Central Government letter dt 13.03.2012 proves the existence of an Industrial Dispute between the Management and its employee. In spite of his continuous service for 12 months as per his aforesaid appointment letter by virtue of which his probation period was supposed to end by 12.09.2007,the same was extended till 12.08.2007as per the Management's letter dt.27.5.2008.He worked almost for 18 months with Company. Yet the Company unjustifiably and baselessly terminated his service, disregarding his satisfactory performance.

5. Shorn of unnecessary details, the case of the O.P/Management with specific denials as stated in its rejoinder/reply is that the petition of the petitioner is unmaintinable.When petitioner Shantanu Gupta was offered an appointment to the position of Manager-Bancassurance in the M-5 Grade as per the Offer Letter dt. Feb 14,2007 of the O.P./Managent,subject to his acceptance of the terms, conditions of job profile of the appointment, he had acceped.He was issued the appointment letter dt.March 12,2007,and designated as "Area Manager-Bancassurance" as per the Management's letter dt.Jan 10,2008.The employees of SBI Life Insurance Co.Ltd are governed by the terms and conditions of Service of Directly Recruited Officers as its applicability clearly mentioned letter: Clause in his appointment letter clause 14.The petitioner as the Manager- Bancassurance had the role to achieve the target set by the SBI/Associate Banks to expand the scope of business in territory through the Branches of SBI/Associates Banks – Group &

Industrial business by increasing number of active branches, judiciously attend the Customer Relationship at regular interval for animation of sales in specific location/ branches, monitor the activities of regional sales officers at regular intervals, and submit its weekly MIS, as well as the performances of branches, CIFs, and identify problems, visiting the branches, ensure the performance of training and coaching as per the plan for adequately equipping every branch/individual with domain knowledge and process skill for doing his/her role in order to increase Activation of CIFs at Quarterly intervals, and timely commission/incentive payments as well, establish, impove and cement the relationship with the officials at Zonal/Regional Offices of SBI, Associate Banks, RRBs and branches, DGMs, AGMs, and to attend performance review meetings. The Manager- Banc assurance needs to possess high quality skills of management, persuasion, communication, leadership, motivation apart from great business acumen. The role was that of a Co-ordinator and supporter. So the petitioner being in the managerial cadre was not a workman under Sec.2 (S) of the Industrial Dispute Act, 1947, as he was appointed accordingly with a monthly salary of Rs. 36,922. As per the Appointment Letter under condition No.6, the petitioner had been on probation for a period of 6 months from the date of his joining which was extendable by a further period at the discretion of the Management. His performance and behaviour was too unsatisfactory during his probation period as intimated to him several times orally, sometimes through emails dt. June 22, 23 and Oct.15 2007; Jan.1, Feb 4, 8, 16, 26 and June 22 and 23, 2008 respectively. Over all, In view of his poor performance and lack of seriousness in the job, the probation of the petitioner was extended till 12.08.2008 as communicated to him as per the Management's letter dt. May 27, 2008.Yet the petitioner did not show any improvement in his performance and behaviour. Some issues relating to his integrity also came to the light. Based on the recommendations of the disciplinary committee, the competent authority after considering all the facts or record decided to terminate the service of the petitioner. As his service was neither satisfactory nor confirmed, as per the letter of termination dt.5.8.2008 his service was terminated by the Management as per the terms under paras 6 & 11 of the letter of Appointment for his breach of the conduct under para (3) (a) to (d) of the terms and conditions of service directly recruited Officers ; accordingly he was simultaneously paid one month salary Rs.15,383/- in lieu of the notice period through the cheque No.406991 dt.5.08.2008,and on his refusal to accept it, it was sent by the Regd.post to him. Thus the termination of the petitioner is just and legal.

6. The O.P./Management has parawise emphatically and categorically denied the allegations of the petitioner, stating that he was appointed in the cadre of Manager in M-5 Grade, a middle Management Cadre. The Company has grades from M-9 to M-1 based on the nature of duties of the employees. M-9 is an entry cadre for Accociates, M-8 is a Senior executive Cadre; M-7 for Asstt. Managers, M-6 Deputy Managers, and M-5 is a cadre for Managers. So the petitioner is not a workman u/s 2(5) of the I.D.Act. The role of the petitioner as the Manager Bancassurance had much independent to develop the business in his area just also as that of a co-ordinator and supporter in it. As the petitioner was not a workman, so the provisions of the I.D. Act do not apply, just as that u/s under its 25-F about his termination not amounting to retrenchment. As the job profile of Manager –Boncassurance is entirely different from that of the Development Officers of LIC. The role of a Manager-Boncassurance in SBI LIC is akin to the role of a Senior Branch Manager in LIC, and the job profile of the Development Officers in LIC is similar to that of Unit manager in SBI.The petitioner was not a Unit Manager. Hence he can not draw a parallel between his role as a Manager-Busnassuance and that of a Development Officer in LIC.Though the company has stipulated a probationary period of one year, it can reduce the probation period as mentioned in the Appointment Letter of the petitioner for 6 months. As the petitioner was terminated because of non-performance; hence no enquiry was conducted.

FINDING WITH REASONS

7. In the reference, WWI Shantanu Gupta,the petitioner for own sake, and MWI Sanjay Prakash, Sr.Area Manager, SBI, LIC, Dhanbad for the Management have been examined respectively.

On perusal of the pleading and evidences, oral and documentary both, of the parties, it appears that there is no dispute about the direct relationship of the parties as an employee and the employer respectively. But their facts at variance with each other evolve the two main points essential for determination in order to give proper adjudication in the reference.

Firstly: Whether the petitioner is the workman as defined under Sec.2(s) of the Industrial Dispute Act. 1947, and

Secondly, whether the petitioner was legally terminated by his employer.

At the outset, it is worth noting that the documents of both parties being replica are referred hereinafter accordingly. As to the first point, the indisputable fact is that the appointment of the petitioner was to the post of Manager (in Grade M5) Bancassruance based on the offer and its acceptance of C.C. the contract as per the Management's letter and the letter of Appointment dt. Feb.12 and March 12, 2007(Ext.W.1 and 2 = M.1 & 2) respectively following his interview only subject to the terms and conditions of Service of Directly Recruited Officers 24th Oct., 2001 SBI Life Insurance Company Ltd.,

Mumbai (Ext.M.8). In course of extended probation, his designation was changed as the Area Manager-Brancassrance as per the Management's letter dt.10.01.2008 (Extt.W.3 = M3) but without any change in his job responsibility as promoter or co-ordinator for the insurance business of the Management as per his position Profile (Ext.W.4 = M.4). As per the remuneration Details Annexure.1 (Ext.W.1/1= M 2/1) to his said appointment letter, the basic monthly salary of the petitioner was Rs.15833/-. Mr. Sanjay Prakash,the Sr.Area Manager as the Representative for the Management has to contend that the petitioner being the Manager in Grade M-5 is not the workman as defined under the Industrial Dispute Act. Whereas the petitioner has to argue that he was out and out a workman under the I.D.Act, 1947 in the nature of his job as a promoter/Co-ordinator in the business of the insurance in the concerned Branches of the Company. Whether the petitioner is a workman or not under Sec2(s) of the I.D.Act depends upon the nature of his duties and not the designation as held by the Hon'ble Supreme Court in the case of Sharad Kumar Vs. Government of National Capital Territory of Delhi reported in (2002) 4 SCC 490 : AIR 2002 Sc 1724.Nature of work and not the salary of an employee will be main criterion to determine the status of a workman " as also held in the case of Shankarbhai Nathalal Prajapati Vs. Maize Products (2003)3 CLR 919:(2003)96 FLR 829. In the instant case, the nature of the job assigned to the petitioner by the Management was merely that of a Promoter/Co ordinator in the insurance business of the Company by co-ordinating its branches in specified areas, but not that of the Manager nor later on that of as the Area Manager initially appointed and latterly designated respectively, as he had no status to take independent decision. Hence the petitioner was factually a workman in the terms of the said Act.

8. So far as the second point of termination of the petitioner is concerned, as per his appointment letter dt.12.3.2007 (Ext.W.2) as the Manager- Bauscassurance, he was on probation for six months till 12.09.2007 in his job of mobilizing the insurance Business of the Company by co-coordinating with the designated officials of the S.B.I. Branches in his assigned territory -203 branches in Bihar and Jharkhand. Meanwhile the workman as stated by himself in affidavited statement was verbally instructed by the Management to resign over the allegation of his previous employer about mismatch in his designation and salary, he successfully reported to it as false. The Management as per its letter dt. Jan.10, 2008 (Extt.W.3=M3) changed his designation as AREA MANAGER without any change in his earlier job responsibility with the same terms and conditions as laid down in his appointment Letter. The petitioner (WWI) has emphatically contended that after his continuous working for more than one year, the Management by its letter dt. 27th May, 2008 (Extt. W.6 =M6) unreasonably extended his probation till 12th August,2008 due to lack of good performance. No sooner had he reached Patna on his deputation from 7th august, 2008 than he learnt of termination of his services based on misconduct and lack of satisfactory performance as per the Management's letter dt .05.08.2008 (Ext.W.7 =M.7) as contrasted with his performance upto the mark as per Patna Circle –Summary Report as on 31.03.07 including Bhagalpur Module F.Y.07-08 (Ext.W.8).

Further emphatic contention of the petitioner is that his termination was without any enquiry by the O.P./ Management, so it was illegal, biased, against the principle of natural justice as well as contrary to the provision of Sec, 25 F of the I.D. Act, as he was neither on probation, nor charge sheeted for any unsatisfactory work or conduct during probation, and besides, neither one month notice or one month basic salary in lieu thereof was given to him prior to it. It is argued on behalf of the petitioner that he was a confirmed employee for all intent and purpose, as during his first probation period (March, 12 to Sept., 12, 2007), the Management had neither issued any intimation of probation extension nor alleged any grievance for his work, so his termination not being in accordance with any standing order was punitive. The petitioner has relied upon the verdict of the Hon'ble Apex Court that if the services of a permanent employee are terminated, then prima facie it constitutes punishment as held in the cases of P.L.Dhinghra Vs. Union of India,1958 SCR 828 : AIR 1958 SC 36.

9. In response to it, the contention of Mr.Jay Prakash, the Representative for the O.P./Management is that the appointment of the petitioner (Ext.W.1,2 = M1 & 2 respectively) was undoubtedly contractual, and his services were governed by the terms and conditions of Services of Directly Recruited Officer (Ext.M.8) as also referred under clause 14 of his appointment Letter (Extt.W.2 = M2).The performance and behaviour of petitioner Shantanu Gupta as communicated to him several times orally and at times via emails by his superiors (Extt.W.5 = M.5 series) on specified dates was quite unsatisfactory, so in view of his poor performances and apathy in his job, his probation period was extended upto 12.08.2008 as per Management's letter dt.27.5.2008 (Extt.W.6 = M.6).He was not confirmed.Desipte giving him sufficient opportunities, there was no improvement in his performance nor his services satisfactory. So he was terminated with his one month basic pay of Rs.15,833 in lieu of his notice as per the letter dtt.5.8.2008 (Ext.W.7 = M.7) for breach of his conduct under clause 9 (3) (a), (b), (c) and (d) of the Terms and Conditions of Services of Directly Recruited Officers of SBI Life Insurance Company Ltd (Ext.M.8).Since the petitioner had refused to accept his termination letter with one basic pay, it was indisputably sent it to him through a Regd. Post. The termination of the petitioner was strictly as per the terms and conditions of his appointment letter and the aforesaid service rules of the Company, It was and

is legal and justified in view of the facts of the present case to which the provision of Article 311 of the Indian Constitution is not applicable, because the SBI Life Insurance Company is not a state as defined under its Article 12, and accordingly, the ruling of P.L.Dhingra case holds not good with the case under adjudication.

10. On perusal and consideration of the materials available on the case record, it stands obvious that the appointment of the petitioner was virtually contractual with the O.P./Management that status of the petitioner/ workman though as the Asstt. Manager being on extended Probation was unconfirmed in the terms and conditions of his appointment/the services rules of the Directly Recruited Officers; since his performance was not satisfactory, the O.P./Management terminated his services according to the terms of his appointment letter paras 11 to 13 read with clauses 4(1) and 6(1) of the aforesaid Terms and Conditions of the Service of Directly Recruited Officers binding upon the petitioner as well. The emails (Extt.W.5 in five sheets) to the workman by his Senior Mr Yogesh Sharma reflect the facts: " why Purnea with zero SBI Life presence ; Your absence from office without intimation as gross misconduct on your part, you were expected to update me on a daily basis'(regarding certain targets..at least 10 branches per region achieve the 100 polices benchmark);are we any closer to the Gramin Bank than 19 of July, when the first mail on the subject was addressed to you; and your apathy but you Conveniently ignore the mails, about how much faithful conduct of the workman was towards the business of the company". His Patna Circle- Summary Report as on 31.03.09 with his Bhagalpur Module F.Y 07-08 (Ext.W.8) apparently appear to be intangible in lack of his specific pleading.

In this case, the petitioner has neither pleading nor reply proof how his performance was upto the mark to the satisfaction of the Management, so his termination of services with payment of his one month salary/wages in lieu of the Notice in compliance with the provision of Sec. 25 F of the Industrial Dispute Act appears to be justified. Termination of probation by making over all assessment of his performance will not amount to retrenchment as held in the case of District Animal Husbandry Offices Bundi Vs. Judge, Labour Court, Kota, (2002) 3 CLR 317:2003 LLR 99, rather it is the discontinuation of the petitioner's service which was based on the specified terms and conditions of the contract entered between both the parties.

In the result, it is, in the terms of the reference, hereby held and

ORDERED

That the Award be and the same is passed that the action of the Management of SBI,Life Insurance Co.Ltd., Mumbai, in terminating factually discontinuing the services of Shri Shantanu Gupta *vide* letter dt.05.08.2008 is quite legal and justified. The workman is not entitled to any relief.

KISHORI RAM, Presiding Officer

नई दिल्ली, 4 अप्रैल, 2014

का.आ. 1233.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार लाइफ इन्शुरेन्स कारपोरेशन ऑफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1, धनबाद के पंचाट (संदर्भ संख्या 19/2007 एवं 34/2008) को प्रकाशित करती है, जो केन्द्रीय सरकार को 1-4-2014 को प्राप्त हुआ था ।

[सं. एल-17012/24/2006-आईआर (एम),

सं. एल-17012/29/2008-आईआर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 4th April, 2014

S.O. 1233.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 19/2007 & 34/2008) of the Central Government Industrial Tribunal/ Labour Court No. 1, Dhanbad, now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Life Insurance Corporation of India and their workman, which was received by the Central Government on 1/4/2014.

[No. L-17012/24/2006-IR(M),

No. L-17012/29/2008-IR(M)]

JOHAN TOPNO, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 1), DHANBAD

IN THE MATTER OF A REFERENCE U/s 10(1) (D) (2A) OF I.D.ACT, 1947

Ref. No. 19 of 2007 and 34 of 2008

Employers in relation to the Management of L.I.C of India, Bhagalpur

AND

Their workmen

Present : Sri Ranjan Kumar Saran, Presiding Officer

Appearances :

For the Employers : Sri Alok Choudhary, AAO (P& IR)

For the workman : Sri B.N.P.Srivastava, Rep.

State : Bihar Industry : Insurance

Dated 26/2/ 2014

AWARD

The Central Government in the Ministry of Labour and Employment has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal:

Ref. No. 19/2007 (Order No. L-17012/24/2006-IR(M) dt. 12.3.2007

SCHEDULE

"Whether the action of the management of LIC of India, Divisional Office, Bhagalpur in down grading the part time water men (Peon Grade) S/Shri Deepak Prasad Sah, Goutam Kumar and Dasarath Choudhary to Sweeper Grade and deducting the amount from their salary in the Sweeper Grade is legal and justified**?** If not , what relief all ofthem are entitled to?"

Ref. No. 34/2008 (Order No. L-17012/29/2008-IR(M) dt. 16.7.2008

SCHEDULE

"Whether the action of the management of LIC of India, Divisional Office, Bhagalpur in down grading the part time water man in respect of Sh. Ranjeet Kumar Pandey from peon grade to Sweeper Grade and deducting the amount from his salary in the Sweeper Grade is legal and justified ? If not , what relief the workman is entitled to and from which date?"

2. Both the cases are received from the Ministry of Labour. After receipt of reference, parties are noticed, the workman files their written statement and the management also files their written statement-cum-rejoinder and documents.

3. Both the above reference cases have been heard analogously as both the two cases are identical in nature. As per petition of the Sponsoring Union the Ref. No. 34 of 2008 is heard analogously with 19 of 2007 .

4. The Short point involved in these reference is that the workmen, were appointed as part time workman by the management in the scale of Rs. 815- 1520 on 22.12.1992 in the peon grade as workmen under the management. But subsequently they are regularized in the post of sweeper grade.

5. The Claim of the workmen is that they are to be regularized in the post of peon grade not in sweeper grade, which is a lower grade. On the other hand the management's case is that the part time water man is similar post of sweeper grade as per audit instruction. But part time water man post is a part time post. From the documents of the management it appears that the workmen were confirmed on 06.07.1993, he reduced them in rank and regularized them in sweeper grade on 1997 i.e. after five years of service in peon grade he was reduced in sweeper grade after confirmation. Moreover it is admitted that pay scale of the workmen were recovered to equalize with the scale of sweeper grade. Reduction to the post of sweeper grade after getting scale of peon, is illegal.

6. Considering the facts and circumstance of this case, I hold that the action of the management of LIC of India, Divisional Office, Bhagalpur in down grading the part time water man in respect of Sri Deepak Kr. Sah, Goutam Kumar, Dasarath Choudhary and Sh. Ranjeet Kumar Pandey and from Peon Grade to Sweeper Grade and deducting the amount from their salary from Sweeper Grade is illegal. The workmen be given the rank of peon grade from the date of their confirmation in their grade i.e. on 06.07.1993 and accordingly their pay and benefits be given.

This is my award.

R. K. SARAN, Presiding Officer

नई दिल्ली, 4 अप्रैल, 2014

का.आ. 1234.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार गैस अथॉरिटी ऑफ इंडिया लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 89/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 1-4-2014 को प्राप्त हुआ था ।

[सं. एल-30012/01/2011-आईआर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 4th April, 2014

S.O. 1234.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 89/2011) of the Central Government Industrial Tribunal/Labour Court, Chennai now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Gas Authority of India Limited and their workmen, which was received by the Central Government on 1/4/2014.

[No. L-30012/01/2011-IR(M)]

JOHAN TOPNO, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Monday, the 17th March, 2014

Present : K. P. PRASANNA KUMARI, Presiding Officer

Industrial Dispute No. 89/2011

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), between the Management of GAIL (India) Ltd. and their workmen)

BETWEEN:

Sri C. Arumugam : 1st Party/Petitioner

AND

1. The General Manager : 2nd Party/1st Respondent
   Gail (India) Ltd.
   4th Floor, Savitha Plaza,
   Indira Gandhi Square
   Puducherry-605505

2. The Director : 2nd Party/2nd Respondent
   Human Resources
   Department
   GAIL (India) Ltd.
   165, Bhikaji Cama Place,
   R.K. Puram, New Delhi.

APPEARANCE:

For the 1st Party/Petitioner : M/s. S. S. Ramachandran, S. S. Mugundan, Advocates

For the 1st and 2nd Party/ Respondents : Sri A. Muraleedharun, Advocates

AWARD

The Central Government, Ministry of Labour & Employment vide its Order No. L-30012/01/2011-IR (M) dated 03.11.2011 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is :

"Whether the action of the management of M/s. GAIL (India) Ltd., in terminating the services of Sri C. Arumugam, Chainman in violation of Section-25F of the ID Act, 1947 is legal and justified? To what relief the concerned workman is entitled?"

2. On receipt of the Industrial Dispute this Tribunal has numbered it as ID 89/2011 and issued notices to both sides. Both sides entered appearance through their counsel and filed their Claim and Counter Statement respectively.

3. The averments in the Claim Statement filed by the petitioner in brief are these :

The petitioner was appointed as Chainman in Gas Authority of India on 22.05.1992 at Nagapattinam. He was continuously working as Chainman without any break. Initially he was paid at the rate of Rs. 900 per month. It was enhanced from time to time. In June 2008, the petitioner had drawn Rs. 3,000 as salary. The petitioner had put in 16 years of continuous service as Chainman with Gas Authority of India (now GAIL (India) Ltd. Initially the petitioner received salary from the Officer-in-Charge of GAIL (India) Ltd. in Nagapattinam. Since the office was shifted to Puducherry, the Officer-in-Charge who is a competent authority of GAIL (India) Ltd. used to pay salary to the petitioner. The service of the petitioner was utilized continuously from 1992. The petitioner was fully engaged in all the pipeline projects of the Company till 2008. The petitioner has to assist the Revenue Inspectors and the Local Sub-Registrar Office to assess the land value and for getting the crop details consequent to the notification for laying the gas pipelines. The compensation amount payable to the land owners used to be paid by way of cheque. The works relating to disbursement of cheques and other related works were attended by the petitioner. The petitioner had worked under different Officers-in-Charge, Special Tahsildars and Revenue Inspectors. The petitioner also assisted the Engineers of GAIL in getting permission from the concerned departments for laying pipelines in road crossing, river crossing, rail crossing, etc. The service of the petitioner was utilized by the finance department of GAIL in serving invoice to Bank. The petitioner was helping the officials to transport files to new premises whenever office was shifted. But, surprisingly on 30.04.2008 the petitioner was orally discharged from his duties. He had applied to the Office-in-Charge to give him regular employment but no reply was given by the GAIL. On applying under Right to Information Act, the petitioner was told that since he was appointed temporarily, regular appointment cannot be given to him. The petitioner had raised the dispute consequently. The petitioner was not given one month notice on termination. He was not given wages in lieu of notice also. An order may be passed directing the Respondents to appoint the petitioner on regular basis in GAIL (India) Ltd. and regularize the petitioner's service with effect from 22.5.1992 and to give arrears of wages. Alternatively, the Respondent shall be directed to pay Rs. 16.00 lakhs to the petitioner as compensation.

4. The Respondents have filed Counter Statement contending as follows:

The claim made by the petitioner is not sustainable either in law or on facts. The petitioner was not appointed by GAIL or the competent authority who is authorized to make the recruitment. The petitioner appears to have been working under Special Tahsildar, the competent authority appointed under the Petroleum and Mineral Pipelines Act (PMP Act) for the purpose of acquiring the right of user of land. There is no such post called Chainman in the organization of the Respondents. The petitioner was not appointed by GAIL through the process of recruitment. The work of laying gas pipeline to various industries in an around Nagapattinam was in the nature of time bound project work and its requirement of manpower was

temporary and for a specific purpose and for a specific period. With the conclusion of the said project work, the requirement would come to an end and so also the employment of the temporary or casual labourer employed for the said work. The petitioner seems to have been engaged by the competent authority nominated by the Central Government to discharge the various functions under the Petroleum and Minerals Pipelines Act for the specific purpose of conducting survey to acquire the right of user in the land by the Central Government under the said Act to enable laying of the pipeline. Such casual engagement will not confer any right on the petitioner to seek any relief against GAIL. The payment vouchers produced by the petitioner would show that the Special Tahsildar who is the competent authority paid remuneration to the petitioner from his imprest sanctioned by GAIL for making the contingent expenses required to be incurred in connection with the work of the project. The Officer-in-Charge has only counter signed the imprest bills. The competent authority have utilized the service of the petitioner to assist the surveyors of the authority as and when required. He was not allotted the main work of surveying the gas pipeline area. The petitioner is not entitled to any relief.

5. The evidence in the case consists of oral evidence of WW1 and MW1 and documents marked as Ext.W1 to Ext.W9 and Ext.M1

6. **The points for consideration are** :

(i) Whether the action of the management in terminating the service of the petitioner is legal and justified?

(ii) What is the relief to which the petitioner is entitled?

The points

7. According to the petitioner, he was appointed as Chainman in Gas Authority of India Ltd. now GAIL (India) Ltd. on 22.05.1992. It is claimed by the petitioner that he was assisting in the work relating to laying of pipelines to various industries. He is said to have been doing other works for the Respondents also. He is said to have worked for GAIL continuously from 22.05.1992 to 30.04.2008 on which date he was orally terminated from service. According to the petitioner, having put in 16 years of service with GAIL (India) Ltd. he is entitled to be regularized in its service. Alternatively, he has claimed compensation from the Respondents also. It is stated by him in the Claim Statement that he was not given any notice under Section-25F of the ID Act before he was terminated. The stand of the Respondents is that the petitioner was never engaged by the organization. In a reluctant manner they have stated in the Counter Statement that the petitioner seems to have been appointed by the competent authority under the PMP Act for the purpose of conducting survey to acquire right of user in the land by Central Government to enable GAIL to lay pipelines. According to the Respondents such casual labour by the competent authority will not confer any right on the petitioner to seek a relief against the Respondents.

8. The petitioner has filed affidavit in lieu of Chief Examination reiterating his case in the Claim Statement.

9. The Senior Manager (Law) of the Respondent Organization has given evidence on behalf of the Respondents. In the Proof Affidavit this witness has repeated the case of the Respondents that the petitioner was never appointed by them, that he was never their employee but was engaged casually by the competent authority appointed under the PMP Act.

10. The documents produced on behalf of the petitioner would give an indication that the petitioner was under the direct employment of the Respondents and not under the Competent Authority. As seen from Ext.W1, the copy of the Attendance Register the petitioner had joined duty on 22.05.1992 as Chainman. The petitioner had produced copies of salary payment vouchers starting from March 1994 and upto January 2008. All these vouchers are to the effect that payment was received by the petitioner from the Gas Authority of India. Of course, the Special Tahsildar who is the competent authority of Gas Authority of India has certified that the petitioner has attended the work for which he is being paid. In all these vouchers the occupation of the petitioner is shown as Chainman itself. In the later receipts the wording that the payment is made by Gas Authority of India Ltd. is omitted. However, it is clear that all along payment was made to the petitioner by the Respondents itself. Apart from the above payment vouchers, there are other documents also which would show that the service of the petitioner was utilized in different ways. Ext.W4 would show that the petitioner had been handed over a cheque book by the State Bank of India on requisition from the Special Tahsildar who is the competent authority of Gas Authority of India. Ext.W5 is a letter by a Senior Officer of GAIL (India) Ltd. to Indian Overseas Bank requesting to issue Letter of Credit for Rs. 12,50,000 to petitioner, the bearer of the letter. Ext.W6 is the letter written by the competent authority to the Post Master of Nagapattinam informing him that since he is a Touring Officer, all letters to him should be delivered to the Office Chain Man, the petitioner.

11. Probably the petitioner might have been working in the Office of the Competent Authority and doing the work of surveying and the related work in connection with the laying of gas pipelines by the Gas Authority of India. It is clear from the documents that the petitioner was working in the capacity as Chainman for several years. Considering the nature of the work, it is also seen that the petitioner was working regularly and continuously. The fact that payment to the petitioner was directly made by the Gas Authority itself would show that he was

under the employment of Gas Authority subsequently GAIL (India) Ltd. for all purposes. Probably, he was working mostly in the work related to laying of gas pipelines. It is for this reason his work is certified by the competent authority.

12. Again, though it is the case of the Respondents that the competent authority is independent of the Gas Authority of India itself, this does not seem to be the position, when the facts are taken into account. The competent authority is appointed for the Gas Authority of India. The survey was done for the Gas Authority. The entire work of the Competent Authority was for the Gas Authority itself. In such circumstances, it is idle for the Respondents to contend that the petitioner was not working under them but was engaged by the Competent Authority and they have nothing to do with the engagement of the petitioner.

13. The very claim of the petitioner in the Claim Statement is for regularization of the post. Thus there is no case for the petitioner that he was appointed for the regular post. He has not produced any appointment order also. It is the case of the Respondent also that the petitioner was not appointed in accordance with its recruitment policy. Thus the engagement of the petitioner was only on casual basis.

14. What is the relief to which the petitioner is entitled in the circumstance? Is he entitled to the relief of regularization and reinstatement in service? The Respondent's counsel has referred to the precedents and pointed out that in such a situation the petitioner was not entitled to regularization, in any case. The counsel has referred to the decision of the Apex Court in SECRETARY, STATE OF KARNATAKA AND OTHERS VS. UMA DEVI AND OTHERS reported in 2006 4 SCC 1 where it was held that merely because a temporary employee or a casual labourer is continued for a time beyond the terms of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules. It is not open to the Court to prevent the regular recruitment at the instance of temporary employees whose period has come to an end or ad-hoc employees who by the very nature of their appointment do not acquire any right, it was further held. In the decision INDIAN DRUGS AND PHARMACEUTICALS LTD. VS. WORKMAN, INDIAN DRUGS AND PHARMACEUTICALS LTD reported in 2007 1 SCC 408 the Apex Court has held that the Court cannot create a post that none exists or issue directions to absorb or regularize temporary employees nor continue them in service as these are purely executive or legislative functions. Such questions cannot be decided in Court on basis of emotions and sympathies, but must be decided on legal principles, it was further held. In the decision Union of India and Another VS ARULMOZHI INIARASU AND OTHERS reported in 2011 7 SCC 397 the Apex Court has held that in spite of uninterrupted engagement of casual labourers for a long duration ranging between 8 to 14 years, doctrine of legitimate expectation is inapplicable since at no point of time was a promise held out to the labourers that they would be absorbed as regular employees of the department. The counsel for the petitioner has referred to the decision HARJINDER SINGH VS. PUNJAB STATE WAREHOUSING CORPORATION reported in 2010 2 SLR 15 where the Apex Court has directed reinstatement. However, it was a case where the junior of a worker concerned was allowed to continue while he was thrown out and work was still going on.

15. The engagement of the petitioner was only casual in nature. There is nothing to show that the work of the nature done by the petitioner is still continuing. In the light of the legal principles referred to above, laid down by the Apex Court, the petitioner is not entitled to regularization. He is not entitled to reinstatement also.

16. It is seen from Ext.W1 itself that the petitioner was engaged as early as in 1992. The salary payment vouchers would show that his engagement continued at least till January 2008 which is the last voucher seen produced. The case of the petitioner is that he was orally terminated from service on 30.04.2008. The vouchers show that he was engaged for full time. In spite of this, the petitioner was terminated from service orally, without notice of termination. The petitioner though a casual employee, is a worker as defined in Section-2(s) of the Industrial Dispute Act. Before he was terminated from service, the employer was bound to comply with the Sction-25F of the Act. The case of the Respondent is that no notice under Section-25(s) is required as the petitioner is not a workman under it. It is apparent that the petitioner has been in the service of the Respondent for long 16 years before he was terminated from service. The Respondent has neither paid any wages in lieu of notice, nor retrenchment compensation under Section-25F(b) of the Act. The petitioner was entitled to compensation before retrenchment. During 2007-2008 the petitioner was drawing a consolidated amount of Rs. 3,000 a month towards wages. He had to put in a fight for several years before getting a relief. Considering all these aspects, I fix the compensation payable to the petitioner as Rs. 2,00,000/-. The 1st Respondent is directed to pay the amount within 2 months, failing which the amount will carry interest at the rate of 9% per month.

The reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 17th March, 2014).

K. P. PRASANNA KUMARI, Presiding Officer

Witnesses Examined :

For the 1st Party/Petitioner : WW1, Sri C. Arumugam

For the 1st& 2nd Party/ Management : MW1, Sri A. Venkatesan

Documents Marked :

On the petitioner's side

Ex.No.	Date	Description
Ex.W1	5/1992	Copy of Attendance Register
Ex.W2	-	Copies of Salary Payment Vouchers
Ex.W3	-	Copy of Receipt for payment of money to receive "C" Form
Ex.W4	11.09.1998	Copy of Authorization Letter to receive Cheque Books issued by the 1st Respondent to the Petitioner
Ex.W5	08.05.2003	Copy of Authorization Letter issued by the 1st Respondent to the petitioner to receive documents from Indian overseas Bank
Ex.W6	-	Copy of Authorization Letter issued to the Postal Authority, Nagapattinam authorizing the petitioner to receive postal documents
Ex.W7	17.10.2006	Copy of the order of the Respondents to give Deepavali allowance to the contingent staff
Ex.W8	30.04.2008	Copy of the Representation given by the petitioner to the 1st Respondent for regular appointment
Ex.W9	03.11.2011	Schedule of reference from Ministry of Labour & Employment

On the Management's side :

Ex.No.	Date	Description
Ex.M1	-	Recruitment Policy of the Respondent Organization.

नई दिल्ली, 4 अप्रैल, 2014

का.आ. 1235.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार हिंदुस्तान पेट्रोलियम कारपोरेशन लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 29/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 1-4-2014 को प्राप्त हुआ था ।

[सं. एल-30012/65/2011-आईआर (एम)]
जोहन तोपनो, अवर सचिव

New Delhi, the 4th April, 2014

S.O. 1235.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 29/2012) of the Central Government Industrial Tribunal/Labour Court, Chennai now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Hindustan Petroleum Corporation Limited and their workman, which was received by the Central Government on 1/4/2014.

[No. L-30012/65/2011-IR(M)]

JOHAN TOPNO, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Friday, the 21st February, 2014

Present : K. P. PRASANNA KUMARI, Presiding Officer

Industrial Dispute No. 29/2012

Industrial Dispute No. 29/2012

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), between the Management of Hindustan Petroleum Corporation Ltd. and their workman)

BETWEEN

Sri J. K. Amulraj : 1st Party/Petitioner

AND

The Chief Installation Manager M/s. Hindustan Petroleum Corporation Ltd. Chennai Terminal, 98/99, Ellaiya Mudali Street Washermanpet Chennai-600021. : 2nd Party/ Respondent

Appearance:

For the 1st Party/ Petitioner : Sri S. Anbazhagan, Advocate

For the 2nd Party/ Respondent : M/s. King & Partridge, Advocates

AWARD

The Central Government, Ministry of Labour & Employment, vide its Order No. L-30012/65/2011-IR(M) dated 21.05.2012 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is :

"Whether the action of the Management of Hindustan Petroleum Corporation Ltd., Chennai in terminating the services of Sri J.K. Amulraj, an Ex-General Service Assistant w.e.f. 31.03.2009 is legal and justified? What relief the workman is entitled to?"

2. On receipt of the Industrial Dispute this Tribunal has numbered it as ID 29/2012 and issued notices to both sides. Both sides have entered appearance through their counsel and filed their Claim and Counter Statement respectively.

3. The averments in the Claim Statement filed by the petitioner in brief are these:

The petitioner had joined the service of the Respondent on 01.06.1987 as General Workman and he was confirmed in the post on 03.08.1987. The petitioner is a disabled person and was appointed through Special Employment Exchange. A charge memo dated 28.07.2009 was issued to the petitioner alleging that he was un-authorizedly absent from duty for 62 days. It was stated in the charge memo that he has been habitually negligent and his absence without leave is without sufficient grounds or proper or satisfactory explanation. He was alleged to have committed the misconduct coming under Clause-31(5) and Clause-31(7) of the Standing Order. An enquiry was conducted and a report was given against him. Though the copy of the report was given to him, he was not able to give any reply due to his ill-health. On 31.03.2009 the Respondent passed an order dismissing the petitioner from service. The order of dismissal is illegal and unjustified. The enquiry was not conducted in a fair and proper manner. The Respondent did not consider the explanation given by the petitioner regarding his illness. An order may be passed holding that dismissal of the petitioner from service is illegal and unjustified and directing the petitioner to reinstate the petitioner in service with back wages and all other attendant benefits.

4. The Respondent has filed Counter Statement contending as follows :

The Respondent is one of the Public Sector Undertakings of Government of India. Frequent absenteeism of the employees for a long period leads to serious dislocation of work. The petitioner was frequently remaining absent unauthorizedly and without permission. During the period from August 2007 to December 2007, he was unauthorizedly absent for 62 days. This is apart from availing all the leaves to which he was entitled. It amounts to misconduct on the part of the petitioner. Charges were framed against the petitioner after calling explanation from him. An enquiry was conducted, giving reasonable opportunity to the petitioner to defend his case. The Enquiry officer submitted findings holding that the charges against the petitioner are proved. The explanation was called for from the petitioner. He has submitted a reply which was found unsatisfactory. The petitioner was discharged from service by paying 30 days pay in lieu of notice. The appeal filed by the petitioner was dismissed. The petitioner is not a disabled person as per the records of the Respondent. The petitioner had participated in the domestic enquiry and had signed the enquiry proceedings. Enquiry was conducted in a fair and proper manner. He was defended by a representative in the enquiry proceedings. During the pendency of the proceedings also, the petitioner remained absent unauthorizedly for 88 days during July 2008 to December 2008. Even after initiating the domestic enquiry the petitioner continued to remain unauthorizedly absent. The petitioner is not entitled to any relief.

5. The evidence in the case consists of oral evidence of WW1 and MW1 and documents marked as Ext.W1 to Ext.W17 and Ext. M1 to Ext. M11

6. **The points for consideration are :**

(i) Whether the termination of the petitioner from service by the Respondent is legal and justified?

(ii) What is the relief to which the petitioner is entitled?

The Points

7. The petitioner had been in the service of the Respondent as a General Workman. It is alleged by the Respondent that during the period from August 2007 to December 2007 he was on unauthorized absence for 62 days. A Charge Memo was issued to the petitioner and domestic enquiry was conducted. The report of the enquiry having turned against him, an order of dismissal from service was made against him after obtaining his explanation. The appeal filed by the petitioner before the Appellate Authority against the dismissal order by the Disciplinary Authority has been rejected. It is accordingly the dispute is raised by the petitioner.

8. In the Claim Statement, the petitioner has contended that the departmental enquiry against him was conducted not in accordance with the principles of natural justice. However, at the time of the argument the counsel for the petitioner has stated that he is not challenging the fairness of the enquiry. In spite of the contention in the Claim Statement, the petitioner had never sought a preliminary finding on the issue also. On going through the enquiry proceedings I find that enquiry was conducted

in a fair and proper manner. Charge memo was issued and his explanation was sought for before charges were framed against him. In the enquiry proceedings he was represented by a representative. So there was no denial of principles of natural justice to the petitioner in the enquiry proceedings also.

9. The finding against the petitioner in the enquiry proceedings is on the basis of the admission made by the petitioner itself. He had admitted during the proceedings that he had remained unauthorizedly absent. However, he had attributed his absence due to his personal ill health and that of his family members. Even in the Claim Statement and during the evidence of the petitioner, he has no case that he was not absent during the period in question. However, he does not seem to have produced any documents during the enquiry proceedings to show that he was actually indisposed and there was sufficient reason and justification for his absence for the period in question. The petitioner has produced certain documents before this Court to show that he was ill during the period of absence. However, these documents produced before this Court, but not before the Enquiry Officer could not be looked into. The Apex Court has held in CHAIRMAN AND MD V.S.P. AND OTHERS VS. GOPARAJU SRI PRABHAKARA HARI BABU reported 2008 4 MLJ 116 that a subsequent explanation before another authority which had not been pleaded in the departmental proceedings cannot by itself be a ground to hold that the principles of natural justice had not been complied with in the disciplinary proceedings. So there is no reason to differ from the finding of the enquiring authority that the petitioner was unauthorizedly absent during the period.

10. The argument that has been vehemently advanced by the counsel for the petitioner is that the punishment that is imposed on the petitioner is not in proportion to the gravity of the offence charged against him. He has pointed out that in imposing the punishment the Respondent has considered his absence for a previous period and even the absence for a subsequent period which according to him is not at all justifiable. The counsel has pointed out that the petitioner was not put to notice of the fact that his previous absence would be referred to and relied upon to impose punishment on him. The counsel has referred to the decision in SRI BHARATI MILLS VS. N.S. MOHAN reported in 1991 (2) MLJ 485 where it was held that where the past conduct on record of service is taken as an act by itself to impose the punishment that cannot be done without putting the employee to notice. The Enquiry Officer has stated in the report that the petitioner was issued with Charge Sheet earlier for similar misconduct for having remained unauthorizedly during 2005 and a lenient view was taken based on his undertaking and affording an opportunity to show his improvement in attendance but unfortunately he is still in the habit of remaining absent unauthorizedly. There is no material to show that previous absence of the petitioner, if any, was not for valid reason. Even the enquiry report shows that his explanation was accepted and he was not imposed with any punishment. So there was no justification in referring to his previous absence and relying upon that for entering a finding against the petitioner.

11. The Enquiry Officer has considered the subsequent absence of the petitioner also. This also is without justification since the explanation of the petitioner for the subsequent absence was not at all obtained. It is found from the documents produced before this Court that the Respondent itself has sent the petitioner to Apollo Hospital for treatment. Ext.W5 is a letter by the Respondent to the Apollo Hospital. Ext.W6 is the Fitness Certificate issued from the hospital alongwith discharge summary. I have referred to these documents to show that there must have been some justification in the case of the petitioner that he was falling ill frequently.

12. The petitioner has stated that he has entered service with the Respondent as a disabled person. Of course the Respondent has stated that its record will not show that he was disabled. However, Ext.W1 a calling letter issued to the petitioner from the Special Employment Exchange for Disabled would show that he comes under the category. Ext.W6 the certificate issued from Apollo Hospital shows that the petitioner is a person having seizure disorder. The discharge summary shows that it was a known case of seizure disorder.

13. When the period of absence of the petitioner is taken into account it could be seen that the punishment imposed is not proportionate to the gravity of the offence. The counsel for the petitioner has referred to a decision of the Apex Court in COLOURCHEM LTD. VS. A.L. ALASPURKAR AND OTHERS reported in 1998 3 SCC 192 where dismissal of the workman for the misconduct of sleeping while on duty was found disproportionate. In the case V. SENTHURVELAN VS. THE HIGH COURT OF JUDICATURE, MADRAS (unreported) the night watchman who was absent from duty was dismissed from service. It was held by the High Court that the punishment is disproportionate to the proved charge.

14. It is true that the petitioner was absent unauthorizedly for more than two months. However, does he deserve the punishment of dismissal from service for this misconduct? It would have been sufficient if a lesser punishment was imposed on him and he was allowed to continue in service. I find that the petitioner is entitled to better treatment in the matter of punishment. The punishment imposed on the petitioner would be modified and reduced to that of stoppage of two increments with cumulative effect. The petitioner will not be entitled to any back wages also. The period of his absence from duty will be counted only for the purpose of continuity of

service. The petitioner shall be reinstated in service. Accordingly, an order is passed as follows:

"The punishment of dismissal of the petitioner from service is modified and is reduced to stoppage of two increments with cumulative effect. The petitioner shall not be entitled to any back wages. The petitioner shall be reinstated in service within one month".

The reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 21st February, 2014).

K. P. PRASANNA KUMARI, Presiding Officer

Witnesses Examined :

For the 1st Party/ Petitioner Union : WW1, Sri J.K. Amulraj

For the 2nd Party/ Management : MW1, Sri C.R. Lal

Documents Marked:

On the petitioner's side

Ex. No.	Date	Description
Ex.W1	07.07.1987	Calling letter from the Special Employment Exchange for Disabled
Ex.W2 (series)	06.10.2005	Letter from the Respondent to K.J. Hospital
	12.09.2007	Medical certificate issued to the petitioner
	21.09.2007	Medical report of the petitioner
	22.09.2007	Clinical report
	23.10.2007	Fitness certificate
	21.11.2007	Clinical report
	10.11.2007	Fitness Certificate
Ex.W3	28.07.2008	Charge Sheet
Ex.W4	20.11.2008	Domestic enquiry proceedings
Ex.W5	21.01.2009	Letter from the Respondent to Apollo Hospital
Ex.W6	24.01.2009	Fitness certificate alongwith discharge summary
Ex.W7	30.01.2009	Domestic Enquiry Proceedings
Ex.W8	30.01.2009	Letter given by the petitioner to the Enquiry Officer
Ex.W9	18.02.2009	Letter from the Respondent to Apollo Hospital
Ex.W10	03.03.2009	Presenting Officer's summation report
Ex.W11	14.03.2009	Enquiry report
Ex.W12	31.03.2009	Proceedings of the disciplinary authority (dismissal order)
Ex.W13	07.07.2009	Order passed by the Appellate Authority
Ex.W14	-	Copy of the 2(A) Petition
Ex.W15	02.11.2010	Reply filed the Respondent
Ex.W16	March 2011	Rejoinder filed by Petitioner
Ex.W17	29.03.2011	Minutes of the Conciliation Officer

On the Management side :

Ex. No.	Date	Description
Ex. M1 To Ex. M5	01.08.2007	Weekly consolidated reports from August 2007 to December 2007
Ex. M6	28.07.2008	Charge Sheet for the period from August 2007 to December 2007
Ex. M7	20.11.2008	
	30.01.2009	Entire domestic enquiry proceedings
	02.03.2009	
Ex. M8	03.03.2009	Presenting Officer's Summation Report
Ex. M9	14.03.2013	Reply to the Enquiry Officer report by the petitioner
Ex. M10	07.07.2009	Proceedings and order of the Appellate Authority.

नई दिल्ली, 4 अप्रैल, 2014

का.आ. 1236.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार ब्यूरो ऑफ सिविल एविएशन सिक्यूरिटी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1, नई दिल्ली के पंचाट (संदर्भ संख्या 45/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 1-4-2014 को प्राप्त हुआ था ।

[सं. एल-15025/1/2014-आईआर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 4th April, 2014

S.O. 1236.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 45/2013) of the Central Government Industrial Tribunal/Labour Court No. 1, New Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Bureau of Civil Aviation Security and their workman, which was received by the Central Government on 1/4/2014.

[No. L-15025/1/2014-IR(M)]

JOHAN TOPNO, Under Secy.

ANNEXURE

BEFORE DR. R. K. YADAV, PRESIDING OFFICER, CENTRAL GOVT. INDUSTRIAL TRIBUNAL NO. I, KARKARDOOMA COURTS COMPLEX, DELHI

I.D. No. 45/2013

Ms. Rajwati w/o Shri Naveen,
R/o H.No.365, Indira Camp,
Rangpuri Mahipalpur,
New Delhi - 110037 ...Workman

Versus

1. M/s Updater Services (P) Ltd.,
   Branch Office, 15, Community Centre,
   East of Kailash, New Delhi.

2. The Manager,
   Bureau of Civil Aviation Security,
   IGI Airport Terminal-3,
   New Delhi-110037 ...Managements

AWARD

M/s. Updater Services Pvt. Ltd. (hereinafter referred to as the contractor) is engaged in providing integrated facility management services to various companies as well as Government authorities. It mainly participates in outsourcing contracts. Contract for providing housekeeping services at Terminal 3, Indira Gandhi International Airport, New Delhi, was obtained by the contractor. To carry out its contractual obligations, the contractor appointed housekeeping staff/attendants. Ms.Rajwati was one of the employees engaged by the contractor. There were various complaints against Ms.Rajwati relating to her work and conduct. When the contractor was confronted with such complaints by Airport Authority of India, the contractor took a decision to replace Ms.Rajwati with some other employee. He transferred Ms.Rajwati to some other station, which action was perceived by Ms. Rajwati as termination of her services. She raised a demand for reinstatement in service, which demand was refuted. Ultimately, she raised a dispute before the Conciliation Officer, which dispute was also contested. Since dispute raised by Ms. Rajwati was contested, conciliation proceedings did not result in favour of the claimant. When 45 days from the date of filing application before the Conciliation Officer stood expired, Ms.Rajwati filed her claim before this Tribunal, while using provisions of sub-section (2) of section 2A of the Industrial Disputes Act, 1947 (in short the Act), without it being referred, for adjudication by the appropriate Government under section 10(1)(d) of the Act. Since the dispute was within the period of limitation as provided by sub-section (3) and in consonance with provisions of sub-section (2) of section 2A of the Act, it was registered as an industrial dispute.

2. Claim statement was filed by Ms.Rajwati pleading that she was engaged by the contractor as an attendant with effect from 18.05.2010. She worked sincerely and diligently. 12 hours duty was taken from her, without payment of overtime wages. No appointment letter was issued in her favour. She was not given any leave. On 28.12.2012, she was slapped by Ms.Gursaran Kaur, the supervisor. She protested against that act of the supervisor. It annoyed the authorities and she was not allowed to resume her duties with effect from 01.03.2012. The contractor terminated her services by not allowing her to resume her duties. She served a legal notice of demand but to no avail. Termination of services is violative of provisions of section 25F of the Act. She claims reinstatement in service with continuity and full back wages.

3. Her claim was contested by the contractor pleading therein that there were various complaints against the claimant. The Airport Authority of India lodged complaints against work and conduct of the claimant many a times. Bureau of Civil Aviation Security refused to renew her entry pass. Constrained with these circumstances, she was replaced by some other attendant. Her services were transferred to other work place. The claimant opted not to join her duties at the station, where she was transferred. It is not disputed that she was engaged in service on 18.05.2010 and rendered her services till 01.03.2012. Since the claimant had failed to resume her duties, it cannot be said that her services were terminated by her employer. Under these circumstances, there is no case in favour of the claimant to seek reinstatement in service with continuity and full back wages. Her claim is liable to be dismissed.

4. Bureau of Civil Aviation Security makes a counter to the claim pleading it is a regulatory body responsible for implementation and enforcement of civil aviation security at Indira Gandhi International Airport, New Delhi. It issues airport entry passes in favour of employees of the contractor. Process of issuance of entry passes does not have any relation with conduct of the employers and the employer, who engages employees to discharge contractual obligations. Since the claimant is not an employee of the answering management, she does not have any claim against it. Her claim may be discarded, pleads Bureau of Civil Aviation Security.

5. On perusal of pleadings, following issues were settled:

(i) Whether claimant rendered continuous service of 240 days in preceding 12 months from the date of termination of her services?

(ii) Whether claimant is entitled to relief of reinstatement in service with Updater Services Pvt. Ltd.

6. Claimant entered the witness box and unfolded facts in her favour. Shri Rakesh Kumar, Manager, deposed

facts on behalf of the contractor. Bureau of Civil Aviation Security opted not to examine any witness.

7. Arguments were heard at the bar. Shri R.P. Sharma, authorized representative, advanced arguments on behalf of the claimant. Shri Tarun Dwivedi, authorized representative, raised submissions on behalf of the contractor. Shri Jagat Singh, Sub Inspector, presented facts on behalf of Bureau of Civil Aviation Security. I have given my careful considerations to arguments advanced at the bar and cautiously perused the records. My findings on issues involved in the controversy are as follows.

Issue No.1

8. In Ex.WW1/A, tendered as evidence, claimant swears that she joined as housekeeping attendant with the contractor on 18.05.2010. She was slapped by Ms.Gursaran Kaur, Supervisor, without any fault of hers. She protested against the said action. It enraged her employer. She was not allowed to resume her duty with effect form 01.03.2012. Shri Rakesh Kumar admits in his testimony that the claimant was engaged on 18.05.2010. He further admits that her attendance as well as service record was being maintained by her employer. Shri Rakesh Kumar projects that on 01.03.2012 services of the claimant were transferred to some other station, where she opted not to join her duties.

9. When facts unfolded by the claimant and those conceded by Shri Rakesh Kumar are appreciated, it came to light that services of the claimant were availed by the contractor since 18.05.2010. The claimant discharged her duties as housekeeping attendant at Terminal 3, Indira Gandhi International Airport, New Delhi. Her claim has been that she was slapped by Ms. Gursaran Kaur, supervisor on 18.12.2012, for no fault of hers. She protested against the said act of the supervisor, which protest enraged her employer. She was not allowed to resume her duties on 01.03.2012 and thus her services were dispensed with. As conceded by Shri Rakesh Kumar, claimant served the contractor till 01.03.2012, when she was transferred to some other station. Out of facts referred above, it is evident that the claimant served the employer from 18.05.2010 till 01.03.2012.

10. An employer may discharge a portion of his labour force as surplusage in a running or continuing business for variety of reasons, e.g., for economy, convenience, rationalization in industry, installation of a new labour saving machinery etc. The Act defines "termination by the employer of the service of a workman for any reasons whatsoever", except the categories exempted in sub-section 2(oo), to be retrenchment. The definition of the term "retrenchment", as enacted by the Act, is extracted thus:

"(oo) "retrenchment" means the termination by the employer of the services of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include-

(a) voluntary retirement of the workman; or

(b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or

(bb) termination of the services of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or

(c) termination of the services of a workman on the ground of continued ill-health".

11. Definition of retrenchment is very wide and in two parts. The first part is exhaustive, which lays down that retrenchment means the termination of the service of a workman by the employer "for any reason whatsoever" otherwise then as a punishment inflicted by way of disciplinary action. Thus main part of the definition itself excludes the termination of service, as a measure of punishment inflicted by way of disciplinary action from the ambit of retrenchment. The second part further excludes (i) voluntary retirement of the workman, or (ii) retirement of workman on reaching the age of superannuation, or (iii) termination of the service of a workman as a result of non-renewal of contract of employment, or (iv) termination of contract of employment in terms of a stipulation contained in the contract of employment in that behalf, or (v) termination of service on the ground of continued ill health of the workman. Reference can be made to the precedents in Avon Services (Production Agencies) (Pvt.) Ltd. [1979 (I) LLJ 1] and Mahabir [1979 (II) LLJ 363].

12. Section 25F of the Act lays down conditions pre-requisite to retrenchment, which are as follows:

(i) There should be one month's notice in writing to the workman concerned.

(ii) The notice should specify the reasons for retrenchment.

(iii) The period of one month's notice should have expired before retrenchment is enforced, or the workman has been paid in lieu of such notice the wages for the period.

(iv) The workman has been paid retrenchment compensation which should be equivalent to 15 days' average pay for every one years' service or any part thereof provided it exceeds six months.

(v) The notice is also given to the appropriate Government.

13. For seeking protection under Section 25-F of the Act an employee should be in continuous service under an employer for not less than one year. Continuous service for a period of one year may include period of interruption on account of sickness or authorized leave or accident or strike, which is not illegal or lockout or cessation of work which is not due to any fault on the part of the workmen, as enacted by provisions of sub section (1) of Section 25-B of the Act. Sub-section (2) of the said section introduces a fiction to the effect that even if a workman is not in "continuous service" within the meaning of clause (1) for a period of one year or six months, he shall be deemed to in continuous service for that period under an employer if he has actually worked for the days specified in clauses (a) and (b) thereof. In Vijay Kumar Majoo (1968 Lab.I.C.1180) it was held that one year's period contemplated by sub-section (2) furnished a unit of measure and if during that unit of measure the period of service actually rendered by the workman is 240 days, then he can be considered to have rendered one year's continuous service for the purpose of the section. The idea is that if within a unit period of one year a person had put in at least 240 days of service, then he must get the benefit conferred by the Act. Consequently, an enquiry has to be made to find out whether the workman actually worked for not less than 240 days during the period of 12 calendar months immediately preceding the retrenchment.

14. In Ramakrishna Ramnath [1970 (2) LLJ 306], Apex Court announced that when a workman renders continuous service of not less than 240 days in 12 calendar months, he is deemed to have completed one years' service in the industry. It would be expedient to reproduce observations made by the Apex Court in that regard, which are extracted thus:

> "Under Section 25-B a workman who during the period of 12 calendar months has actually worked in an industry for not less than 240 days is to be deemed to have completed One year's service in the industry. Consequently an enquiry has to be made to find out whether the workman had actually worked for not less than 240 days during period of 12 calendar months immediately preceding the retrenchment. These provisions of law do not show that a workman after satisfying the test under Section 25-B has further to show that he has worked during all the period he has been in the service of the employer for 240 days in the year".

15. Interruption of service occurred during the course of job has to be included in uninterrupted services. Fiction under Section 25-B of the Act will operate if workmen has actually worked for 240 days in a calendar year. The explanation appended to Section 25-B of the Act specifically includes the days on which workman was laid off under an agreement or he has been on leave with full wages, or he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment and in the case of a female, maternity leave, under the expression 'actually worked' used under sub-section (2) of Section 25-B of the Act. Question for consideration would be as to whether the words 'actually worked' would not include holidays, Sundays and Saturdays for which full wages are paid. The Apex Court was confronted with such a proposition in American Express Banking Corporation [1985 (2) LLJ 539], wherein it was ruled that the expression 'actually worked under the employer', cannot mean those days only when the workman worked with hammer, sickle or pen, but must necessarily comprehend all those days during which he was in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc. The Court ruled that Sundays and other holidays, would be comprehended in the words 'actually worked" and it countenanced the contention of the employer that only days which are mentioned in the explanation should be taken into account for the purpose of calculating the number of days on which the workman had actually worked though he had not so worked and no other days. The Court observed that the explanation is only clarificatory, as all explanations are, and cannot be used to limit the expanse of the main provision. Precedent in Lalappa Lingappa [1981 (1) LJ 308] was distinguished by the Apex Court in the case referred above. The precedent was followed in Standard Motor Products of India Ltd. [1986 (1) LLJ 34]. Thus, it is crystal clear from the law laid above that Sundays and holidays shall be included in computing continuous service under Section 25-B of the Act.

16. As emerge out of facts unfolded by the claimant and those conceded by Shri Rakesh Kumar, claimant served the contractor from 18.05.2010 till 29.02.2012. Period of service rendered by the claimant, as detailed above, nowhere includes Sundays and holidays. In a year, an employee may get 52 weekly offs, besides three national holidays. In case 52 weekly offs and three national holidays are added to the periods referred above, claimant could establish beyond doubt that she rendered continuous service of a period of 240 days in two calendar years, as contemplated by Section 25-B of the Act. Resultantly, it is concluded that the claimant has been able to project that she rendered continuous service of 240 days in two calendar years to avail benefits of provisions of Section 25-F of the Act. The issue is, therefore, answered in favour of the claimant and against the contractor.

Issue No. 2

17. Claimant projects that her services were abruptly dispensed with on 01.03.2012. Contra to it, Shri Rakesh

Kumar deposed in bold words that services of the claimant were transferred to some other site in Delhi, where she opted not to join her duties. He declares that as on date, claimant is on the rolls of the contractor. Out of facts unfolded by Shri Rakesh Kumar, it emerged that services of the claimant has neither been discharged, dismissed, terminated nor otherwise retrenched. When she still remains on rolls of her employer, it is not a case relating to discharge, dismissal, retrenchment or otherwise termination of her services by her employer. As emerged out of record, dispute relates to transfer of the claimant from one station to another. Her employer wants her to comply transfer order but she is adamant in joining her duties at Terminal 3, Indira Gandhi International Airport, New Delhi. Whether this dispute will fall within the ambit of section 2A of the Act, so that the claimant may avail provisions of sub-section (2) of the said section and seek adjudication of the dispute from the Tribunal, without it being referred for adjudication by the appropriate Government under section 10(1)(d) of the Act? Answer is plain and simple. Her dispute does not fall within the purview of section 2A of the Act, since she continues to be on rolls of her employer. Machinery, provided under section 2A of the Act for resolution of disputes, relating to discharge, dismissal, retrenchment or otherwise termination of service of an employee, will not come to her rescue.

18. When the contractor had not terminated her services at all, it is not a case wherein relief of reinstatement in service may be granted in favour of the claimant. Under these circumstances, it is evident that no cause of action accrued in favour of the claimant to invoke provisions of sub-section (2) of section 2A of the Act, to seek adjudication of the dispute. It is concluded that the dispute is not maintainable as such. Issue is, therefore, answered in favour of the contractor and against the claimant.

19. As concluded above, the contractor had not taken any action to discharge, dismiss, retrench or otherwise terminate services of the claimant. He opted to transfer services of the clamant to some other station, which order was not complied with. Claimant is still on the rolls of her employer. Under these circumstances, relief of reinstatement in service, as claimed, is not available. Claim statement deserves dismissal. Same is, accordingly, dismissed. An award is passed in favour of the contractor and against the claimant. It be sent to the appropriate Government for publication.

Dated: 05.02.2013

Dr. R. K. YADAV, Presiding Officer

नई दिल्ली, 4 अप्रैल, 2014

का.आ. 1237.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार ब्यूरो ऑफ सिविल एविएशन सिक्यूरिटी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1, नई दिल्ली के पंचाट (संदर्भ संख्या 46/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 1-4-2014 को प्राप्त हुआ था ।

[सं. एल-15025/1/2014-आईआर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 4th April, 2014

S.O. 1237.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 46/2013) of the Central Government Industrial Tribunal/Labour Court No. 1, New Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Bereau of Civil Aviation Security and their workman, which was received by the Central Government on 1/4/2014.

[No. L-15025/1/2014-IR(M)]

JOHAN TOPNO, Under Secy.

ANNEXURE

BEFORE DR. R. K. YADAV, PRESIDING OFFICER, CENTRAL GOVT. INDUSTRIAL TRIBUNAL NO. I, KARKARDOOMA COURTS COMPLEX, DELHI

I.D. No. 46/2013

Shri Suresh Kumar S/o Shri Chandu,
R/o House. No. 332,
Rangpuri Pahar,
Mahipalpur,
New Delhi ...Workman

Versus

1. M/s. Updater Services (P) Ltd.,
   Branch Office, 15, Community Centre,
   East of Kailash, New Delhi.

2. The Manager,
   Bureau of Civil Aviation Security,
   IGI Airport Terminal-3,
   New Delhi-110037 ...Managements

AWARD

M/s. Updater Services Pvt. Ltd. (hereinafter referred to as the contractor) is engaged in providing integrated facility management services to various companies as well as Government authorities. It mainly participates in outsourcing contracts. Contract for providing housekeeping services at Terminal 3, Indira Gandhi International Airport, New Delhi, was obtained by the contractor. To carry out its contractual obligations, the contractor appointed housekeeping staff/attendants. Shri Suresh Kumar was one of the employees engaged by

the contractor. There were various complaints against Shri Suresh Kumar relating to his work and conduct. When the contractor was confronted with such complaints by Airport Authority of India, the contractor took a decision to replace Shri Suresh Kumar with some other employee. He transferred Shri Suresh Kumar to some other station, which action was perceived by him as termination of his services. He raised a demand for reinstatement in service, which demand was refuted. Ultimately, he raised a dispute before the Conciliation Officer, which dispute was also contested. Since dispute raised by Shri Suresh Kumar was contested, conciliation proceedings did not result in favour of the claimant. When 45 days from the date of filing application before the Conciliation Officer stood expired, Shri Suresh Kumar filed his claim before this Tribunal, while using provisions of sub-section (2) of section 2A of the Industrial Disputes Act, 1947 (in short the Act), without it being referred, for adjudication by the appropriate Government under section 10(1)(d) of the Act. Since the dispute was within the period of limitation as provided by sub-section (3) and in consonance with provisions of sub-section (2) of section 2A of the Act, it was registered as an industrial dispute.

2. Claim statement was filed by Shri Suresh Kumar pleading that he was engaged by the contractor as an attendant with effect from 18.05.2010. He worked sincerely and diligently. 12 hours duty was taken from him, without payment of overtime wages. No appointment letter was issued in his favour. He was not given any leave. Ajay, Incharge of the contractor at Terminal 3, Indira Gandhi International Airport was in the habit of asking bribe for renewal of entry passes of the employees. Claimant protested against the said act and conduct of Shri Ajay, which enraged the authorities and he was not allowed to resume his duties with effect from 01.03.2012. The contractor terminated his services by not allowing him to resume his duties. He served a legal notice of demand but to no avail. Termination of services is violative of provisions of section 25F of the Act. He claims reinstatement in service with continuity and full back wages.

3. His claim was contested by the contractor pleading therein that there were various complaints against the claimant. The Airport Authority of India lodged complaints against work and conduct of the claimant many a times. Bureau of Civil Aviation Security refused to renew his entry pass. Constrained with these circumstances, he was replaced by some other attendant. His services were transferred to other work place. The claimant opted not to join his duties at the station, where he was transferred. It is not disputed that he was engaged in service on 18.05.2010 and rendered his services till 01.03.2012. Since the claimant had failed to resume his duties, it cannot be said that his services were terminated by his employer. Under these circumstances, there is no case in favour of the claimant to seek reinstatement in service with continuity and full back wages. His claim is liable to be dismissed.

4. Bureau of Civil Aviation Security makes a counter to the claim pleading it is a regulatory body responsible for implementation and enforcement of civil aviation security at Indira Gandhi International Airport, New Delhi. It issues airport entry passes in favour of employees of the contractor. Process of issuance of entry passes does not have any relation with conduct of the employers and the employer, who engages employees to discharge contractual obligations. Since the claimant is not an employee of the answering management, he does not have any claim against it. His claim may be discarded, pleads Bureau of Civil Aviation Security.

5. On perusal of pleadings, following issues were settled:

(i) Whether claimant rendered continuous service of 240 days in preceding 12 months from the date of termination of his services?

(ii) Whether claimant is entitled to relief of reinstatement in service with Updater Services Pvt. Ltd.?

6. Claimant entered the witness box and unfolded facts in his favour. Shri Rakesh Kumar, Manager, deposed facts on behalf of the contractor. Bureau of Civil Aviation Security opted not to examine any witness.

7. Arguments were heard at the bar. Shri R.P. Sharma, authorized representative, advanced arguments on behalf of the claimant. Shri Tarun Dwivedi, authorized representative, raised submissions on behalf of the contractor. Shri Jagat Singh, Sub Inspector, presented facts on behalf of Bureau of Civil Aviation Security. I have given my careful considerations to arguments advanced at the bar and cautiously perused the records. My findings on issues involved in the controversy are as follows.

Issue No. 1

8. In Ex.WW1/A, tendered as evidence, claimant swears that he joined as housekeeping attendant with the contractor on 18.05.2010. Ajay, Incharge of the contractor at Terminal 3, Indira Gandhi International Airport was in the habit of asking bribe for renewal of entry passes of the employees. Claimant protested against the said act and conduct of Shri Ajay, which enraged his employer. He was not allowed to resume his duty with effect form 01.03.2012. Shri Rakesh Kumar admits in his testimony that the claimant was engaged on 18.05.2010. He further admits that his attendance as well as service record was being maintained by his employer. Shri Rakesh Kumar projects that on 01.03.2012 services of the claimant were transferred to some other station, where he opted not to join his duties.

9. When facts unfolded by the claimant and those conceded by Shri Rakesh Kumar are appreciated, it came to light that services of the claimant were availed by the

contractor since 18.05.2010. The claimant discharged his duties as housekeeping attendant at Terminal 3, Indira Gandhi International Airport, New Delhi. His claim has been that Ajay, Incharge of the contractor at Terminal 3, Indira Gandhi International Airport was in the habit of asking bribe for renewal of entry passes of the employees. Claimant protested against the said act, which protest enraged his employer. He was not allowed to resume his duties on 01.03.2012 and thus his services were dispensed with. As conceded by Shri Rakesh Kumar, claimant served the contractor till 01.03.2012, when he was transferred to some other station. Out of facts referred above, it is evident that the claimant served the employer from 18.05.2010 till 01.03.2012.

10. An employer may discharge a portion of his labour force as surplusage in a running or continuing business for variety of reasons, e.g., for economy, convenience, rationalization in industry, installation of a new labour saving machinery etc. The Act defines "termination by the employer of the service of a workman for any reasons whatsoever", except the categories exempted in sub-section 2(oo), to be retrenchment. The definition of the term "retrenchment", as enacted by the Act, is extracted thus:

"(oo) "retrenchment" means the termination by the employer of the services of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include-

(a) voluntary retirement of the workman; or

(b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or

(bb) termination of the services of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or

(c) termination of the services of a workman on the ground of continued ill-health".

11. Definition of retrenchment is very wide and in two parts. The first part is exhaustive, which lays down that retrenchment means the termination of the service of a workman by the employer "for any reason whatsoever" otherwise then as a punishment inflicted by way of disciplinary action. Thus main part of the definition itself excludes the termination of service, as a measure of punishment inflicted by way of disciplinary action from the ambit of retrenchment. The second part further excludes (i) voluntary retirement of the workman, or (ii) retirement of workman on reaching the age of superannuation, or (iii) termination of the service of a workman as a result of non-renewal of contract of employment, or (iv) termination of contract of employment in terms of a stipulation contained in the contract of employment in that behalf, or (v) termination of service on the ground of continued ill health of the workman. Reference can be made to the precedents in Avon Services (Production Agencies) (Pvt.) Ltd. [1979 (I) LLJ 1] and Mahabir [1979 (II) LLJ 363].

12. Section 25F of the Act lays down conditions pre-requisite to retrenchment, which are as follows:

(i) There should be one month's notice in writing to the workman concerned.

(ii) The notice should specify the reasons for retrenchment.

(iii) The period of one month's notice should have expired before retrenchment is enforced, or the workman has been paid in lieu of such notice the wages for the period.

(iv) The workman has been paid retrenchment compensation which should be equivalent to 15 days' average pay for every one years' service or any part thereof provided it exceeds six months.

(v) The notice is also given to the appropriate Government.

13. For seeking protection under section 25-F of the Act an employee should be in continuous service under an employer for not less than one year. Continuous service for a period of one year may include period of interruption on account of sickness or authorized leave or accident or strike, which is not illegal or lockout or cessation of work which is not due to any fault on the part of the workmen, as enacted by provisions of sub-section (1) of section 25B of the Act. Sub-section (2) of the said section introduces a fiction to the effect that even if a workman is not in "continuous service" within the meaning of clause (1) for a period of one year or six months, he shall be deemed to in continuous service for that period under an employer if he has actually worked for the days specified in clauses (a) and (b) thereof. In Vijay Kumar Majoo (1968 Lab.I.C.1180) it was held that one year's period contemplated by sub-section (2) furnished a unit of measure and if during that unit of measure the period of service actually rendered by the workman is 240 days, then he can be considered to have rendered one year's continuous service for the purpose of the section. The idea is that if within a unit period of one year a person had put in at least 240 days of service, then he must get the benefit conferred by the Act. Consequently, an enquiry has to be made to find out whether the workman actually worked for not less than 240 days during the period of 12 calendar months immediately preceding the retrenchment.

14. In Ramakrishna Ramnath [1970 (2) LLJ 306], Apex Court announced that when a workman renders continuous service of not less than 240 days in 12 calendar months, he is deemed to have completed one years' service in the industry. It would be expedient to reproduce observations made by the Apex Court in that regard, which are extracted thus:

> "Under Section 25-B a workman who during the period of 12 calendar months has actually worked in an industry for not less than 240 days is to be deemed to have completed One year's service in the industry. Consequently an enquiry has to be made to find out whether the workman had actually worked for not less than 240 days during period of 12 calendar months immediately preceding the retrenchment. These provisions of law do not show that a workman after satisfying the test under Section 25B has further to show that he has worked during all the period he has been in the service of the employer for 240 days in the year".

15. Interruption of service occurred during the course of job has to be included in uninterrupted services. Fiction under section 25-B of the Act will operate if workmen has actually worked for 240 days in a calendar year. The explanation appended to section 25-B of the Act specifically includes the days on which workman was laid off under an agreement or he has been on leave with full wages, or he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment and in the case of a female, maternity leave, under the expression 'actually worked' used under sub-section (2) of section 25-B of the Act. Question for consideration would be as to whether the words 'actually worked' would not include holidays, Sundays and Saturdays for which full wages are paid. The Apex Court was confronted with such a proposition in American Express Banking Corporation [1985 (2) LLJ 539], wherein it was ruled that the expression 'actually worked under the employer' cannot mean those days only when the workman worked with hammer, sickle or pen, but must necessarily comprehend all those days during which he was in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc. The Court ruled that Sundays and other holidays, would be comprehended in the words ''actually worked" and it countenanced the contention of the employer that only days which are mentioned in the explanation should be taken into account for the purpose of calculating the number of days on which the workman had actually worked though he had not so worked and no other days. The Court observed that the explanation is only clarificatory, as all explanations are, and cannot be used to limit the expanse of the main provision. Precedent in Lalappa Lingappa [1981 (1) LJ 308] was distinguished by the Apex Court in the case referred above. The precedent was followed in Standard Motor Products of India Ltd. [1986 (1) LLJ 34]. Thus, it is crystal clear from the law laid above that Sundays and holidays shall be included in computing continuous service under section 25-B of the Act.

16. As emerge out of facts unfolded by the claimant and those conceded by Shri Rakesh Kumar, claimant served the contractor from 18.05.2010 till 29.02.2012. Period of service rendered by the claimant, as detailed above, nowhere includes Sundays and holidays. In a year, an employee may get 52 weekly offs, besides three national holidays. In case 52 weekly offs and three national holidays are added to the periods referred above, claimant could establish beyond doubt that he rendered continuous service of a period of 240 days in two calendar years, as contemplated by section 25 B of the Act. Resultantly, it is concluded that the claimant has been able to project that he rendered continuous service of 240 days in two calendar years to avail benefits of provisions of section 25F of the Act. The issue is, therefore, answered in favour of the claimant and against the contractor.

Issue No. 2

17. Claimant projects that his services were abruptly dispensed with on 01.03.2012. Contra to it, Shri Rakesh Kumar deposed in bold words that services of the claimant were transferred to some other site in Delhi, where he opted not to join his duties. He declares that as on date, claimant is on the rolls of the contractor. Out of facts unfolded by Shri Rakesh Kumar, it emerged that services of the claimant has neither been discharged, dismissed, terminated nor otherwise retrenched. When he still remains on rolls of his employer, it is not a case relating to discharge, dismissal, retrenchment or otherwise termination of his services by his employer. As emerged out of record, dispute relates to transfer of the claimant from one station to another. His employer wants him to comply transfer order but he is adamant in joining his duties at Terminal 3, Indira Gandhi International Airport, New Delhi. Whether this dispute will fall within the ambit of section 2A of the Act, so that the claimant may avail provisions of sub-section (2) of the said section and seek adjudication of the dispute from the Tribunal, without it being referred for adjudication by the appropriate Government under section 10(1)(d) of the Act? Answer is plain and simple. His dispute does not fall within the purview of section 2A of the Act, since he continues to be on rolls of his employer. Machinery, provided under section 2A of the Act for resolution of disputes, relating to discharge, dismissal, retrenchment or otherwise termination of service of an employee, will not come to his rescue.

18. When the contractor had not terminated his services at all, it is not a case wherein relief of reinstatement in service may be granted in favour of the claimant. Under

these circumstances, it is evident that no cause of action accrued in favour of the claimant to invoke provisions of sub-section (2) of Section 2A of the Act, to seek adjudication of the dispute. It is concluded that the dispute is not maintainable as such. Issue is, therefore, answered in favour of the contractor and against the claimant.

19. As concluded above, the contractor had not taken any action to discharge, dismiss, retrench or otherwise terminate services of the claimant. He opted to transfer services of the claimant to some other station, which order was not complied with. Claimant is still on the rolls of his employer. Under these circumstances, relief of reinstatement in service, as claimed, is not available. Claim statement deserves dismissal. Same is, accordingly, dismissed. An award is passed in favour of the contractor and against the claimant. It be sent to the appropriate Government for publication.

Dated: 05.02.2013

Dr. R. K. YADAV, Presiding Officer

नई दिल्ली, 4 अप्रैल, 2014

का.आ. 1238.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार ब्यूरो ऑफ सिविल एविएशन सिक्यूरिटी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1, नई दिल्ली के पंचाट (संदर्भ संख्या 48/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 1-4-2014 को प्राप्त हुआ था ।

[सं. एल-15025/1/2014-आईआर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 4th April, 2014

S.O. 1238.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 48/2013) of the Central Government Industrial Tribunal/Labour Court No. 1, New Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Bereau of Civil Aviation Security and their workman, which was received by the Central Government on 1/4/2014.

[No. L-15025/1/2014-IR(M)]

JOHAN TOPNO, Under Secy.

ANNEXURE

BEFORE DR. R. K. YADAV, PRESIDING OFFICER, CENTRAL GOVT. INDUSTRIAL TRIBUNAL NO. I, KARKARDOOMA COURTS COMPLEX, DELHI

I.D. No. 48/2013

Ms. Geeta Devi W/o Shri Hukam Singh,
R/o H.No. 377, Indira Camp,
Rangpuri Mahipalpur,
New Delhi - 110037 ...Workman

Versus

1. M/s Updater Services (P) Ltd.,
   Branch Office, 15, Community Centre,
   East of Kailash, New Delhi.
2. The Manager,
   Bureau of Civil Aviation Security,
   IGI Airport Terminal-3,
   New Delhi-110037 ...Managements

AWARD

M/s. Updater Services Pvt. Ltd. (hereinafter referred to as the contractor) is engaged in providing integrated facility management services to various companies as well as Government authorities. It mainly participates in outsourcing contracts. Contract for providing housekeeping services at Terminal 3, Indira Gandhi International Airport, New Delhi, was obtained by the contractor. To carry out its contractual obligations, the contractor appointed housekeeping staff/attendants. Ms.Gita Devi was one of the employees engaged by the contractor. There were various complaints against Ms. Gita Devi relating to her work and conduct. When the contractor was confronted with such complaints by Airport Authority of India, the contractor took a decision to replace Ms. Gita Devi with some other employee. He transferred Ms.Gita Devi to some other station, which action was perceived by Ms. Gita Devi as termination of her services. She raised a demand for reinstatement in service, which demand was refuted. Ultimately, she raised a dispute before the Conciliation Officer, which dispute was also contested. Since dispute raised by Ms. Gita Devi was contested, conciliation proceedings did not result in favour of the claimant. When 45 days from the date of filing application before the Conciliation Officer stood expired, Ms. Gita Devi filed her claim before this Tribunal, while using provisions of sub-section (2) of Section 2A of the Industrial Disputes Act, 1947 (in short the Act), without it being referred, for adjudication by the appropriate Government under section 10(1)(d) of the Act. Since the dispute was within the period of limitation as provided by sub-section (3) and in consonance with provisions of sub-section (2) of Section 2A of the Act, it was registered as an industrial dispute.

2. Claim statement was filed by Ms. Gita Devi pleading that she was engaged by the contractor as an attendant with effect from 18.05.2010. She worked sincerely

and diligently. 12 hours duty was taken from her, without payment of overtime wages. No appointment letter was issued in her favour. She was not given any leave. On 28.12.2012, she was slapped by Ms.Gursaran Kaur, the supervisor. She protested against that act of the supervisor. It annoyed the authorities and she was not allowed to resume her duties with effect from 01.03.2012. The contractor terminated her services by not allowing her to resume her duties. She served a legal notice of demand but to no avail. Termination of services is violative of provisions of Section 25F of the Act. She claims reinstatement in service with continuity and full back wages.

3. Her claim was contested by the contractor pleading therein that there were various complaints against the claimant. The Airport Authority of India lodged complaints against work and conduct of the claimant many a times. Bureau of Civil Aviation Security refused to renew her entry pass. Constrained with these circumstances, she was replaced by some other attendant. Her services were transferred to other work place. The claimant opted not to join her duties at the station, where she was transferred. It is not disputed that she was engaged in service on 18.05.2010 and rendered her services till 01.03.2012. Since the claimant had failed to resume her duties, it cannot be said that her services were terminated by her employer. Under these circumstances, there is no case in favour of the claimant to seek reinstatement in service with continuity and full back wages. Her claim is liable to be dismissed.

4. Bureau of Civil Aviation Security makes a counter to the claim pleading it is a regulatory body responsible for implementation and enforcement of civil aviation security at Indira Gandhi International Airport, New Delhi. It issues airport entry passes in favour of employees of the contractor. Process of issuance of entry passes does not have any relation with conduct of the employers and the employer, who engages employees to discharge contractual obligations. Since the claimant is not an employee of the answering management, she does not have any claim against it. Her claim may be discarded, pleads Bureau of Civil Aviation Security.

5. On perusal of pleadings, following issues were settled:

(i) Whether claimant rendered continuous service of 240 days in preceding 12 months from the date of termination of her services?

(ii) Whether claimant is entitled to relief of reinstatement in service with Updater Services Pvt. Ltd.

6. Claimant entered the witness box and unfolded facts in her favour. Shri Rakesh Kumar, Manager, deposed facts on behalf of the contractor. Bureau of Civil Aviation Security opted not to examine any witness.

7. Arguments were heard at the bar. Shri R.P. Sharma, authorized representative, advanced arguments on behalf of the claimant. Shri Tarun Dwivedi, authorized representative, raised submissions on behalf of the contractor. Shri Jagat Singh, Sub Inspector, presented facts on behalf of Bureau of Civil Aviation Security. I have given my careful considerations to arguments advanced at the bar and cautiously perused the records. My findings on issues involved in the controversy are as follows.

Issue No. 1

8. In Ex.WW1/A, tendered as evidence, claimant swears that she joined as housekeeping attendant with the contractor on 18.05.2010. She was slapped by Ms.Gursaran Kaur, Supervisor, without any fault of hers. She protested against the said action. It enraged her employer. She was not allowed to resume her duty with effect form 01.03.2012. Shri Rakesh Kumar admits in his testimony that the claimant was engaged on 18.05.2010. He further admits that her attendance as well as service record was being maintained by her employer. Shri Rakesh Kumar projects that on 01.03.2012 services of the claimant were transferred to some other station, where she opted not to join her duties.

9. When facts unfolded by the claimant and those conceded by Shri Rakesh Kumar are appreciated, it came to light that services of the claimant were availed by the contractor since 18.05.2010. The claimant discharged her duties as housekeeping attendant at Terminal 3, Indira Gandhi International Airport, New Delhi. Her claim has been that she was slapped by Ms. Gursaran Kaur, supervisor on 18.12.2012, for no fault of hers. She protested against the said act of the supervisor, which protest enraged her employer. She was not allowed to resume her duties on 01.03.2012 and thus her services were dispensed with. As conceded by Shri Rakesh Kumar, claimant served the contractor till 01.03.2012, when she was transferred to some other station. Out of facts referred above, it is evident that the claimant served the employer from 18.05.2010 till 01.03.2012.

10. An employer may discharge a portion of his labour force as surplusage in a running or continuing business for variety of reasons, e.g., for economy, convenience, rationalization in industry, installation of a new labour saving machinery etc. The Act defines "termination by the employer of the service of a workman for any reasons whatsoever", except the categories exempted in sub-section 2(oo), to be retrenchment. The definition of the term "retrenchment", as enacted by the Act, is extracted thus:

"(oo) "retrenchment" means the termination by the employer of the services of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include-

(a) voluntary retirement of the workman; or

(b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or

(bb) termination of the services of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or

(c) termination of the services of a workman on the ground of continued ill-health".

11. Definition of retrenchment is very wide and in two parts. The first part is exhaustive, which lays down that retrenchment means the termination of the service of a workman by the employer "for any reason whatsoever" otherwise then as a punishment inflicted by way of disciplinary action. Thus main part of the definition itself excludes the termination of service, as a measure of punishment inflicted by way of disciplinary action from the ambit of retrenchment. The second part further excludes (i) voluntary retirement of the workman, or (ii) retirement of workman on reaching the age of superannuation, or (iii) termination of the service of a workman as a result of non-renewal of contract of employment, or (iv) termination of contract of employment in terms of a stipulation contained in the contract of employment in that behalf, or (v) termination of service on the ground of continued ill health of the workman. Reference can be made to the precedents in Avon Services (Production Agencies) (Pvt.) Ltd. [1979 (I) LLJ 1] and Mahabir [1979 (II) LLJ 363].

12. Section 25F of the Act lays down conditions pre-requisite to retrenchment, which are as follows:

(i) There should be one month's notice in writing to the workman concerned.

(ii) The notice should specify the reasons for retrenchment.

(iii) The period of one month's notice should have expired before retrenchment is enforced, or the workman has been paid in lieu of such notice the wages for the period.

(iv) The workman has been paid retrenchment compensation which should be equivalent to 15 days' average pay for every one years' service or any part thereof provided it exceeds six months.

(v) The notice is also given to the appropriate Government.

13. For seeking protection under section 25-F of the Act an employee should be in continuous service under an employer for not less than one year. Continuous service for a period of one year may include period of interruption on account of sickness or authorized leave or accident or strike, which is not illegal or lockout or cessation of work which is not due to any fault on the part of the workmen, as enacted by provisions of sub section (1) of Section 25B of the Act. Sub-section (2) of the said section introduces a fiction to the effect that even if a workman is not in "continuous service" within the meaning of clause (1) for a period of one year or six months, he shall be deemed to in continuous service for that period under an employer if he has actually worked for the days specified in clauses (a) and (b) thereof. In Vijay Kumar Majoo (1968 Lab.I.C.1180) it was held that one year's period contemplated by sub-section (2) furnished a unit of measure and if during that unit of measure the period of service actually rendered by the workman is 240 days, then he can be considered to have rendered one year's continuous service for the purpose of the section. The idea is that if within a unit period of one year a person had put in at least 240 days of service, then he must get the benefit conferred by the Act. Consequently, an enquiry has to be made to find out whether the workman actually worked for not less than 240 days during the period of 12 calendar months immediately preceding the retrenchment.

14. In Ramakrishna Ramnath [1970 (2) LLJ 306], Apex Court announced that when a workman renders continuous service of not less than 240 days in 12 calendar months, he is deemed to have completed one years' service in the industry. It would be expedient to reproduce observations made by the Apex Court in that regard, which are extracted thus:

"Under Section 25-B a workman who during the period of 12 calendar months has actually worked in an industry for not less than 240 days is to be deemed to have completed One year's service in the industry. Consequently an enquiry has to be made to find out whether the workman had actually worked for not less than 240 days during period of 12 calendar months immediately preceding the retrenchment. These provisions of law do not show that a workman after satisfying the test under Section 25B has further to show that he has worked during all the period he has been in the service of the employer for 240 days in the year".

15. Interruption of service occurred during the course of job has to be included in uninterrupted services. Fiction under Section 25-B of the Act will operate if workmen has actually worked for 240 days in a calendar year. The explanation appended to Section 25-B of the Act specifically includes the days on which workman was laid off under an agreement or he has been on leave with full wages, or he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment and in the case of a female, maternity leave, under the expression 'actually worked' used under sub-section (2) of Section 25-B of the Act. Question for consideration would be as to whether the

words 'actually worked' would not include holidays, Sundays and Saturdays for which full wages are paid. The Apex Court was confronted with such a proposition in American Express Banking Corporation [1985 (2) LLJ 539], wherein it was ruled that the expression 'actually worked under the employer'. cannot mean those days only when the workman worked with hammer, sickle or pen, but must necessarily comprehend all those days during which he was in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc. The Court ruled that Sundays and other holidays, would be comprehended in the words 'actually worked' and it countenanced the contention of the employer that only days which are mentioned in the explanation should be taken into account for the purpose of calculating the number of days on which the workman had actually worked though he had not so worked and no other days. The Court observed that the explanation is only clarificatory, as all explanations are, and cannot be used to limit the expanse of the main provision. Precedent in Lalappa Lingappa [1981 (1) LJ 308] was distinguished by the Apex Court in the case referred above. The precedent was followed in Standard Motor Products of India Ltd. [1986 (1) LLJ 34]. Thus, it is crystal clear from the law laid above that Sundays and holidays shall be included in computing continuous service under section 25-B of the Act.

16. As emerge out of facts unfolded by the claimant and those conceded by Shri Rakesh Kumar, claimant served the contractor from 18.05.2010 till 29.02.2012. Period of service rendered by the claimant, as detailed above, nowhere includes Sundays and holidays. In a year, an employee may get 52 weekly offs, besides three national holidays. In case 52 weekly offs and three national holidays are added to the periods referred above, claimant could establish beyond doubt that she rendered continuous service of a period of 240 days in two calendar years, as contemplated by section 25 B of the Act. Resultantly, it is concluded that the claimant has been able to project that she rendered continuous service of 240 days in two calendar years to avail benefits of provisions of section 25F of the Act. The issue is, therefore, answered in favour of the claimant and against the contractor.

Issue No. 2

17. Claimant projects that her services were abruptly dispensed with on 01.03.2012. Contra to it, Shri Rakesh Kumar deposed in bold words that services of the claimant were transferred to some other site in Delhi, where she opted not to join her duties. He declares that as on date, claimant is on the rolls of the contractor. Out of facts unfolded by Shri Rakesh Kumar, it emerged that services of the claimant has neither been discharged, dismissed, terminated nor otherwise retrenched. When she still remains on rolls of her employer, it is not a case relating to discharge, dismissal, retrenchment or otherwise termination of her services by her employer. As emerged out of record, dispute relates to transfer of the claimant from one station to another. Her employer wants her to comply transfer order but she is adamant in joining her duties at Terminal 3, Indira Gandhi International Airport, New Delhi. Whether this dispute will fall within the ambit of section 2A of the Act, so that the claimant may avail provisions of sub-section (2) of the said section and seek adjudication of the dispute from the Tribunal, without it being referred for adjudication by the appropriate Government under section 10(1)(d) of the Act? Answer is plain and simple. Her dispute does not fall within the purview of Section 2A of the Act, since she continues to be on rolls of her employer. Machinery, provided under Section 2A of the Act for resolution of disputes, relating to discharge, dismissal, retrenchment or otherwise termination of service of an employee, will not come to her rescue.

18. When the contractor had not terminated her services at all, it is not a case wherein relief of reinstatement in service may be granted in favour of the claimant.. Under these circumstances, it is evident that no cause of action accrued in favour of the claimant to invoke provisions of sub-section (2) of section 2A of the Act, to seek adjudication of the dispute. It is concluded that the dispute is not maintainable as such. Issue is, therefore, answered in favour of the contractor and against the claimant.

19. As concluded above, the contractor had not taken any action to discharge, dismiss, retrench or otherwise terminate services of the claimant. He opted to transfer services of the clamant to some other station, which order was not complied with. Claimant is still on the rolls of her employer. Under these circumstances, relief of reinstatement in service, as claimed, is not available. Claim statement deserves dismissal. Same is, accordingly, dismissed. An award is passed in favour of the contractor and against the claimant. It be sent to the appropriate Government for publication.

Dated: 05.02.2013

Dr. R. K. YADAV, Presiding Officer

नई दिल्ली, 4 अप्रैल, 2014

का.आ. 1239.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार ब्यूरो ऑफ सिविल एविएशन सिक्यूरिटी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1, नई दिल्ली के पंचाट (संदर्भ संख्या 47/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 1-4-2014 को प्राप्त हुआ था ।

[सं. एल-15025/1/2014-आईआर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 4th April, 2014

S.O. 1239.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 47/2013) of the Central Government Industrial Tribunal/Labour Court No. 1, New Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Bereau of Civil Aviation Security and their workman, which was received by the Central Government on 1/4/2014.

[No. L-15025/1/2014-IR(M)]

JOHAN TOPNO, Under Secy.

ANNEXURE

BEFORE DR. R. K. YADAV, PRESIDING OFFICER, CENTRAL GOVT. INDUSTRIAL TRIBUNAL NO. I, KARKARDOOMA COURTS COMPLEX, DELHI

I.D. No. 47/2013

Shri Rakesh Beniwal,
S/o Shri Sakru Ram,
R/o J-45, JJ Camp Tigri,
Khanpur, New Delhi ...Workman

Versus

1. M/s. Updater Services (P) Ltd.,
   Branch Office, 15, Community Centre,
   East of Kailash, New Delhi.

2. The Manager,
   Bureau of Civil Aviation Security,
   IGI Airport Terminal-3,
   New Delhi-110037 ...Managements

AWARD

M/s. Updater Services Pvt. Ltd. (hereinafter referred to as the contractor) is engaged in providing integrated facility management services to various companies as well as Government authorities. It mainly participates in outsourcing contracts. Contract for providing housekeeping services at Terminal 3, Indira Gandhi International Airport, New Delhi, was obtained by the contractor. To carry out its contractual obligations, the contractor appointed housekeeping staff/attendants. Shri Rakesh Beniwal was one of the employees engaged by the contractor. There were various complaints against Shri Rakesh Beniwal relating to his work and conduct. When the contractor was confronted with such complaints by Airport Authority of India, the contractor took a decision to replace Shri Rakesh Beniwal with some other employee. He transferred Shri Rakesh Beniwal to some other station, which action was perceived by him as termination of his services. He raised a demand for reinstatement in service, which demand was refuted. Ultimately, he raised a dispute before the Conciliation Officer, which dispute was also contested. Since dispute raised by Shri Rakesh Beniwal was contested, conciliation proceedings did not result in favour of the claimant. When 45 days from the date of filing application before the Conciliation Officer stood expired, Shri Rakesh Beniwal filed his claim before this Tribunal, while using provisions of sub-section (2) of section 2A of the Industrial Disputes Act, 1947 (in short the Act), without it being referred, for adjudication by the appropriate Government under section 10(1)(d) of the Act. Since the dispute was within the period of limitation as provided by sub-section (3) and in consonance with provisions of sub-section (2) of section 2A of the Act, it was registered as an industrial dispute.

2. Claim statement was filed by Shri Rakesh Beniwal pleading that he was engaged by the contractor as an attendant with effect from 18.05.2010. He worked sincerely and diligently. 12 hours duty was taken from him, without payment of overtime wages. No appointment letter was issued in his favour. He was not given any leave. Shri Ajay, Incharge of the contractor at Terminal 3, Indira Gandhi International Airport, was in the habit of asking bribe for renewal of entry passes of the employees. Claimant protested against the said act and conduct of Shri Ajay, which enraged the authorities and he was not allowed to resume his duties with effect from 01.03.2012. The contractor terminated his services by not allowing him to resume his duties. He served a legal notice of demand but to no avail. Termination of services is violative of provisions of section 25F of the Act. He claims reinstatement in service with continuity and full back wages.

3. His claim was contested by the contractor pleading therein that there were various complaints against the claimant. The Airport Authority of India lodged complaints against work and conduct of the claimant many a times. Bureau of Civil Aviation Security refused to renew his entry pass. Constrained with these circumstances, he was replaced by some other attendant. His services were transferred to other work place. The claimant opted not to join his duties at the station, where he was transferred. It is not disputed that he was engaged in service on 18.05.2010 and rendered his services till 01.03.2012. Since the claimant had failed to resume his duties, it cannot be said that his services were terminated by his employer. Under these circumstances, there is no case in favour of the claimant to seek reinstatement in service with continuity and full back wages. His claim is liable to be dismissed.

4. Bureau of Civil Aviation Security makes a counter to the claim pleading it is a regulatory body responsible for implementation and enforcement of civil aviation security at Indira Gandhi International Airport, New Delhi. It issues airport entry passes in favour of employees of the contractor. Process of issuance of entry passes does not have any relation with conduct of the employers and

the employer, who engages employees to discharge contractual obligations. Since the claimant is not an employee of the answering management, he does not have any claim against it. His claim may be discarded, pleads Bureau of Civil Aviation Security.

5. On perusal of pleadings, following issues were settled:

(i) Whether claimant rendered continuous service of 240 days in preceding 12 months from the date of termination of his services?

(ii) Whether claimant is entitled to relief of reinstatement in service with Updater Services Pvt. Ltd.?

6. Claimant entered the witness box and unfolded facts in his favour. Shri Rakesh Kumar, Manager, deposed facts on behalf of the contractor. Bureau of Civil Aviation Security opted not to examine any witness.

7. Arguments were heard at the bar. Shri R.P. Sharma, authorized representative, advanced arguments on behalf of the claimant. Shri Tarun Dwivedi, authorized representative, raised submissions on behalf of the contractor. Shri Jagat Singh, Sub Inspector, presented facts on behalf of Bureau of Civil Aviation Security. I have given my careful considerations to arguments advanced at the bar and cautiously perused the records. My findings on issues involved in the controversy are as follows.

Issue No. 1

8. In Ex.WW1/A, tendered as evidence, claimant swears that he joined as housekeeping attendant with the contractor on 18.05.2010. Shri Ajay, Incharge of the contractor at Terminal 3, Indira Gandhi International Airport, was in the habit of asking bribe for renewal of entry passes of the employees. Claimant protested against the said act and conduct of Shri Ajay, which enraged his employer. He was not allowed to resume his duty with effect from 01.03.2012. Shri Rakesh Kumar admits in his testimony that the claimant was engaged on 18.05.2010. He further admits that his attendance as well as service record was being maintained by his employer. Shri Rakesh Kumar projects that on 01.03.2012 services of the claimant were transferred to some other station, where he opted not to join his duties.

9. When facts unfolded by the claimant and those conceded by Shri Rakesh Kumar are appreciated, it came to light that services of the claimant were availed by the contractor since 18.05.2010. The claimant discharged his duties as housekeeping attendant at Terminal 3, Indira Gandhi International Airport, New Delhi. His claim has been that Shri Ajay, Incharge of the contractor at Terminal 3, Indira Gandhi International Airport was in the habit of asking bribe for renewal of entry passes of the employees. Claimant protested against the said act, which protest enraged his employer. He was not allowed to resume his duties on 01.03.2012 and thus his services were dispensed with. As conceded by Shri Rakesh Kumar, claimant served the contractor till 01.03.2012, when he was transferred to some other station. Out of facts referred above, it is evident that the claimant served the employer from 18.05.2010 till 01.03.2012.

10. An employer may discharge a portion of his labour force as surplusage in a running or continuing business for variety of reasons, e.g., for economy, convenience, rationalization in industry, installation of a new labour saving machinery etc. The Act defines "termination by the employer of the service of a workman for any reasons whatsoever", except the categories exempted in sub-section 2(oo), to be retrenchment. The definition of the term "retrenchment", as enacted by the Act, is extracted thus:

"(oo) "retrenchment" means the termination by the employer of the services of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include-

(a) voluntary retirement of the workman; or

(b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or

(bb) termination of the services of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or

(c) termination of the services of a workman on the ground of continued ill-health".

11. Definition of retrenchment is very wide and in two parts. The first part is exhaustive, which lays down that retrenchment means the termination of the service of a workman by the employer "for any reason whatsoever" otherwise then as a punishment inflicted by way of disciplinary action. Thus main part of the definition itself excludes the termination of service, as a measure of punishment inflicted by way of disciplinary action from the ambit of retrenchment. The second part further excludes (i) voluntary retirement of the workman, or (ii) retirement of workman on reaching the age of superannuation, or (iii) termination of the service of a workman as a result of non-renewal of contract of employment, or (iv) termination of contract of employment in terms of a stipulation contained in the contract of employment in that behalf, or (v)

termination of service on the ground of continued ill health of the workman. Reference can be made to the precedents in Avon Services (Production Agencies) (Pvt.) Ltd. [1979 (I) LLJ 1] and Mahabir [1979 (II) LLJ 363].

12. Section 25F of the Act lays down conditions pre-requisite to retrenchment, which are as follows:

(i) There should be one month's notice in writing to the workman concerned.

(ii) The notice should specify the reasons for retrenchment.

(iii) The period of one month's notice should have expired before retrenchment is enforced, or the workman has been paid in lieu of such notice the wages for the period.

(iv) The workman has been paid retrenchment compensation which should be equivalent to 15 days' average pay for every one years' service or any part thereof provided it exceeds six months.

(v) The notice is also given to the appropriate Government.

13. For seeking protection under Section 25-F of the Act an employee should be in continuous service under an employer for not less than one year. Continuous service for a period of one year may include period of interruption on account of sickness or authorized leave or accident or strike, which is not illegal or lockout or cessation of work which is not due to any fault on the part of the workmen, as enacted by provisions of sub section (1) of section 25B of the Act. Sub-section (2) of the said section introduces a fiction to the effect that even if a workman is not in "continuous service" within the meaning of clause (1) for a period of one year or six months, he shall be deemed to in continuous service for that period under an employer if he has actually worked for the days specified in clauses (a) and (b) thereof. In Vijay Kumar Majoo (1968 Lab.I.C.1180) it was held that one year's period contemplated by sub-section (2) furnished a unit of measure and if during that unit of measure the period of service actually rendered by the workman is 240 days, then he can be considered to have rendered one year's continuous service for the purpose of the section. The idea is that if within a unit period of one year a person had put in at least 240 days of service, then he must get the benefit conferred by the Act. Consequently, an enquiry has to be made to find out whether the workman actually worked for not less than 240 days during the period of 12 calendar months immediately preceding the retrenchment.

14. In Ramakrishna Ramnath [1970 (2) LLJ 306], Apex Court announced that when a workman renders continuous service of not less than 240 days in 12 calendar months, he is deemed to have completed one years' service in the industry. It would be expedient to reproduce observations made by the Apex Court in that regard, which are extracted thus:

> "Under Section 25-B a workman who during the period of 12 calendar months has actually worked in an industry for not less than 240 days is to be deemed to have completed One year's service in the industry. Consequently an enquiry has to be made to find out whether the workman had actually worked for not less than. 240 days during period of 12 calendar months immediately preceding the retrenchment. These provisions of law do not show that a workman after satisfying the test under Section 25B has further to show that he has worked during all the period he has been in the service of the employer for 240 days in the year".

15. Interruption of service occurred during the course of job has to be included in uninterrupted services. Fiction under Section 25-B of the Act will operate if workmen has actually worked for 240 days in a calendar year. The explanation appended to section 25-B of the Act specifically includes the days on which workman was laid off under an agreement or he has been on leave with full wages, or he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment and in the case of a female, maternity leave, under the expression 'actually worked' used under sub-section (2) of Section 25-B of the Act. Question for consideration would be as to whether the words 'actually worked' would not include holidays, Sundays and Saturdays for which full wages are paid. The Apex Court was confronted with such a proposition in American Express Banking Corporation [1985 (2) LLJ 539], wherein it was ruled that the expression 'actually worked under the employer'. cannot mean those days only when the workman worked with hammer, sickle or pen, but must necessarily comprehend all those days during which he was in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc. The Court ruled that Sundays and other holidays, would be comprehended in the words 'actually worked" and it countenanced the contention of the employer that only days which are mentioned in the explanation should be taken into account for the purpose of calculating the number of days on which the workman had actually worked though he had not so worked and no other days. The Court observed that the explanation is only clarificatory, as all explanations are, and cannot be used to limit the expanse of the main provision. Precedent in Lalappa Lingappa [1981 (1) LJ 308] was distinguished by the Apex Court in the case referred above. The precedent was followed in Standard Motor Products of India Ltd. [1986 (1) LLJ 34]. Thus, it is crystal clear from the law laid above that Sundays and holidays shall be

included in computing continuous service under section 25-B of the Act.

16. As emerge out of facts unfolded by the claimant and those conceded by Shri Rakesh Kumar, claimant served the contractor from 18.05.2010 till 29.02.2012. Period of service rendered by the claimant, as detailed above, nowhere includes Sundays and holidays. In a year, an employee may get 52 weekly offs, besides three national holidays. In case 52 weekly offs and three national holidays are added to the periods referred above, claimant could establish beyond doubt that he rendered continuous service of a period of 240 days in two calendar years, as contemplated by section 25 B of the Act. Resultantly, it is concluded that the claimant has been able to project that he rendered continuous service of 240 days in two calendar years to avail benefits of provisions of section 25F of the Act. The issue is, therefore, answered in favour of the claimant and against the contractor.

Issue No. 2

17. Claimant projects that his services were abruptly dispensed with on 01.03.2012. Contra to it, Shri Rakesh Kumar deposed in bold words that services of the claimant were transferred to some other site in Delhi, where he opted not to join his duties. He declares that as on date, claimant is on the rolls of the contractor. Out of facts unfolded by Shri Rakesh Kumar, it emerged that services of the claimant has neither been discharged, dismissed, terminated nor otherwise retrenched. When he still remains on rolls of his employer, it is not a case relating to discharge, dismissal, retrenchment or otherwise termination of his services by his employer. As emerged out of record, dispute relates to transfer of the claimant from one station to another. His employer wants him to comply transfer order but he is adamant in joining his duties at Terminal 3, Indira Gandhi International Airport, New Delhi. Whether this dispute will fall within the ambit of section 2A of the Act, so that the claimant may avail provisions of sub-section (2) of the said section and seek adjudication of the dispute from the Tribunal, without it being referred for adjudication by the appropriate Government under section 10(1)(d) of the Act? Answer is plain and simple. His dispute does not fall within the purview of section 2A of the Act, since he continues to be on rolls of his employer. Machinery, provided under section 2A of the Act for resolution of disputes, relating to discharge, dismissal, retrenchment or otherwise termination of service of an employee, will not come to his rescue.

18. When the contractor had not terminated his services at all, it is not a case wherein relief of reinstatement in service may be granted in favour of the claimant.. Under these circumstances, it is evident that no cause of action accrued in favour of the claimant to invoke provisions of sub-section (2) of section 2A of the Act, to seek adjudication of the dispute. It is concluded that the dispute is not maintainable as such. Issue is, therefore, answered in favour of the contractor and against the claimant.

19. As concluded above, the contractor had not taken any action to discharge, dismiss, retrench or otherwise terminate services of the claimant. He opted to transfer services of the claimant to some other station, which order was not complied with. Claimant is still on the rolls of his employer. Under these circumstances, relief of reinstatement in service, as claimed, is not available. Claim statement deserves dismissal. Same is, accordingly, dismissed. An award is passed in favour of the contractor and against the claimant. It be sent to the appropriate Government for publication.

Dated: 05.02.2013

Dr. R. K. YADAV, Presiding Officer

नई दिल्ली, 4 अप्रैल, 2014

का.आ. 1240.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार इंडियन ऑयल कारपोरेशन लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1, नई दिल्ली के पंचाट (संदर्भ संख्या 145/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 1-4-2014 को प्राप्त हुआ था ।

[सं. एल-30012/46/2012-आईआर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 4th April, 2014

S.O. 1240.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 145/2012) of the Central Government Industrial Tribunal/Labour Court No. 1, New Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Indian Oil Corporation Ltd. and their workman, which was received by the Central Government on 1-4-2014.

[No. L-30012/46/2012-IR(M)]

JOHAN TOPNO, Under Secy.

ANNEXURE

BEFORE DR. R. K. YADAV, PRESIDING OFFICER, CENTRAL GOVT. INDUSTRIAL TRIBUNAL NO. I, KARKARDOOMA COURTS COMPLEX, DELHI

I.D. No. 145/2012

Shri Raj Kumar,
S/o Shri Raj Singh,
R/o VPO : Bhaingra Khurd,
Distt. Rohtak,
Haryana ...Workman

Versus

1. The Manager,
Indane Gas Terminal,
M/s. IOCL, Tikri Kalan,
Delhi-110041.

2. M/s. Beehive Security and Surveillance,
H.No.43, Rathi Enclave,
New Roshan Vihar,
Kakraula More, Najafgarh,
New Delhi-110043 ...Management

AWARD

Indian Oil Corporation Ltd. (in short the Corporation) deals with procurement, export, import, refining, storage, transportation, sale and distribution of petroleum products and crude oil. The Corporation owns and operates many refineries in India. It recruits its work force, in consonance with the recruitment rules. Jobs, which are of intermittent/ casual/sporadic in nature, are got performed through employees of a contractor. The Corporation engages security guards through a contractor, registered with Directorate General of Resettlement, Ministry of Defence, Government of India, New Delhi. Directorate General of Resettlement has formulated a scheme for benefit and employment of ex-servicemen and the contractors, registered with it, follow the said scheme. M/s Beehive Security and Surveillance (in short the Contractor) is one of security agencies, registered with the Directorate General of Resettlement and provides security guards to the Corporation.

2. Shri Raj Kumar was engaged as a security guard by the Contractor to work at Tikri Kalan Deport, Delhi, of the Corporation. He served there since April, 2011. In October 2011, he resigned his job and obtained full and final settlement of his dues from the Contractor. Subsequently, he perceived that the amount, paid to him by the Contractor towards full and final settlement of his dues, was meager. He raised a demand for reinstatement in service of the Contactor, which demand was not conceded to. Therefore, he raised a dispute before the Conciliation Officer. Since his claim was contested by the Contractor, conciliation proceedings ended into a failure. On consideration of failure report, submitted by the Conciliation Officer, the appropriate Government referred the dispute to this Tribunal for adjudication, *vide* order No.L-30012/46/2012-IR(M), New Delhi dated 28.10.2012 with following terms:

"Whether action of the management of M/s. Beehive Security & Surveillance in terminating services of Shri Raj Kumar, S/o Shri Raj Singh from Indian Oil Corporation Depot, Tikri Kalan, Delhi, with effect from 20.09.2011 is legal and justified? What relief the workman is entitled to?"

3. Claim statement was filed by Shri Raj Kumar pleading therein that he was engaged as Security Guard by the Contractor on 23.03.2010. He performed his duties at Tikri Kalan Depot of the Corporation regularly and punctually. He was made to work overtime, for which overtime allowance was not paid. He demanded overtime allowance for overtime work performed by him, which demand irked the contractor. His services were illegally terminated on 20.09.2011, without giving one months' notice or pay in lieu thereof. His salary for last several months remained unpaid. Action of termination of his services is illegal and void ab initio. He claims reinstatement in service of the Contractor with continuity and full back wages.

4. The Corporation contests the claim pleading that job for performance of works of intermittent/casual/ sporadic in nature, was assigned to the Contractor. The Contractor engaged his employees to carry out his contractual obligations. There was no relationship of employer and employee between the claimant and the Corporation. The Corporation has followed provisions of Contract Labour (Regulation and Abolition) Act, 1970. No cause has been made out against the Corporation. Claim put forth by the claimant is liable to be dismissed.

5. The Contractor dispels the claim pleading that the claimant resigned his services voluntarily in October, 2011 and accepted a sum of Rs.6142.00 towards full and final settlement of his dues. Since the claimant himself resigned the job, there was no occasion for the Contractor to terminate his services. Claimant was engaged as a security guard on 01.04.2011, as projected by the Contractor. His wages were paid in time. His services were not satisfactory. He used to behave indecently on many occasions. Since the Contractor has not taken any action to dispense with the services of the claimant, there was no occasion to give one months' notice or pay in lieu thereof, besides retrenchment compensation. Claim put forward is not maintainable and is liable to be dismissed, pleads the Contractor.

6. Claimant was called upon to adduce evidence to substantiate his claim. Instead of bringing evidence on record to establish his claim, claimant opted to abandon the proceedings since 25.04.2013. The Tribunal was constrained to proceed with the matter under rule 22 of Industrial Disputes (Central) Rules, 1957 and evidence of the claimant was closed.

7. Shri Ajay Pandey, tendered his affidavit as evidence on behalf of the Contractor. Since none was there

on behalf of the claimant, opportunity could not be accorded to him to purify facts unfolded by Shri Pandey through an ordeal of cross examination. No other witness was examined by the Contractor. Corporation opted not to examine any witness.

8. Arguments were heard at the bar. None came forward on behalf of the claimant to present facts. Shri Ajit Singh, authorized representative, advanced arguments on behalf of the Contractor. Shri Naveen Kumar Chaudhary, authorized representative, raised submissions on behalf of the Corporation. I have given my careful consideration to the arguments advanced at the bar and cautiously perused the record. My findings on issues involved in the controversy are as follows:-

9. Shri Ajay Pandey swears in his affidavit dated 13.03.2014, tendered as evidence, that the claimant joined services of the Contractor on 01.04.2011. His last drawn wages were Rs.6142.00. Claimant resigned the job and took full and final settlement of his dues on 04.10.2011. Receipt was executed by him in that regard, which is Ex.MW1/1. He was paid his dues in cash. Facts unfolded by Shri Pandey remained un-assailed. An un-assailed testimony is to be accepted as true, unless it contains some inherent defects, having bearing on its veracity. Since facts unfolded by Shri Pandey nowhere suffers from any defect, which may give inference to the effect that he is not a reliable witness, his testimony is found to be acceptable.

10. As emerge out of his testimony, which gets re-affirmation from the documents, referred above, that the claimant tendered his resignation, accepted full and final settlement of his dues and left services of the Contractor for good. The fact that he accepted his full and final settlement of his dues makes it apparent that the claimant resigned from service on his own. These facts are sufficient to conclude that the claimant left his services on his own and marched away in search of greener pastures. Under these circumstances, the claimant cannot agitate that his services were terminated by the Contractor. It cannot be said that the services of the claimant were terminated/ discontinued by the Contractor with effect from September 2011.

11. The Contractor could establish that it had not initiated any action to dispense with the services of the claimant. Hence, it cannot be said that the Contractor terminated his services, which act amounts to retrenchment, as defined in section 2(oo) of the Industrial Disputes Act, 1947 (in short the Act). By any stretch of imagination, it cannot be said that action of the Contractor, in accepting resignation of the claimant, amounts to retrenchment. Therefore, provisions of section 25F of the Act does not come into play.

12. No case has been projected by the claimant for application of provisions of section 25G and 25H of the Act. It is evident that the claimant is not entitled to any intervention by this Tribunal. When he himself resigned the job, no occasion would arise to assess legality and justifiability of action of the Contractor in that regard. The claimant is not entitled to any relief, not to talk of relief of reinstatement in service with continuity and full back wages. His claim statement is brushed aside. An award is, accordingly, passed. It be sent to the appropriate Government for publication.

Dated : 13.03.2014

Dr. R. K. YADAV, Presiding Officer

नई दिल्ली, 4 अप्रैल, 2014

का.आ. 1241.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार इंडियन ऑयल कारपोरेशन लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1, नई दिल्ली के पंचाट (संदर्भ संख्या 146/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 1-4-2014 को प्राप्त हुआ था ।

[सं. एल-30012/44/2012-आईआर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 4th April, 2014

S.O. 1241.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 146/ 2012) of the Central Government Industrial Tribunal/Labour Court No. 1, New Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Indian Oil Corporation Ltd. and their workman, which was received by the Central Government on 1/4/2014.

[No. L-30012/44/2012-IR(M)]

JOHAN TOPNO, Under Secy.

ANNEXURE

BEFORE DR. R. K. YADAV, PRESIDING OFFICER, CENTRAL GOVT. INDUSTRIAL TRIBUNAL NO. I, KARKARDOOMA COURTS COMPLEX, DELHI

I.D. No. 146/2012

Shri Dharam Pal,
S/o Shri Jai Pal,
R/o Plot No. 75,
Sainik Enclave Part I,
Jharoda Kalan, CRPF Camp,
Najafgarh, New Delhi-110072 ...Workman

Versus

1. The Manager,
   Indane Gas Terminal,

M/s. IOCL, Tikari Kalan,
Delhi-110041.

2. M/s. Beehive Security and Surveillance,
H.No.43, Rathi Enclave,
New Roshan Vihar,
Kakraula More, Najafgarh,
New Delhi-110043 ...Management

AWARD

Indian Oil Corporation Ltd. (in short the Corporation) deals with procurement, export, import, refining, storage, transportation, sale and distribution of petroleum products and crude oil. The Corporation owns and operates many refineries in India. It recruits its work force, in consonance with the recruitment rules. Jobs, which are of intermittent/ casual/sporadic in nature, are got performed through employees of a contractor. The Corporation engages security guards through a contractor, registered with Directorate General of Resettlement, Ministry of Defence, Government of India, New Delhi. Directorate General of Resettlement has formulated a scheme for benefit and employment of ex-servicemen and the contractors, registered with it, follow the said scheme. M/s Beehive Security and Surveillance (in short the Contractor) is one of security agencies, registered with the Directorate General of Resettlement and provides security guards to the Corporation.

2. Shri Dharam Pal was engaged as a gunman by the Contractor to work at Tikri Kalan Deport, Delhi, of the Corporation. He served there since August 2010. In March 2012, he resigned his job and obtained full and final settlement of his dues from the Contractor. Subsequently, he perceived that the amount, paid to him by the Contractor towards full and final settlement of his dues, was meager. He raised a demand for reinstatement in service of the Contactor, which demand was not conceded to. Therefore, he raised a dispute before the Conciliation Officer. Since his claim was contested by the Contractor, conciliation proceedings ended into a failure. On consideration of failure report, submitted by the Conciliation Officer, the appropriate Government referred the dispute to this Tribunal for adjudication, vide order No.L-30012/44/2012-IR(M), New Delhi dated 28.10.2012 with following terms:

> "Whether action of the management of M/s. Beehive Security & Surveillance in terminating services of Shri Dharam Pal, S/o Shri Jai Pal from Indian Oil Corporation Depot, Tikri Kalan, Delhi, with effect from 15.09.2011 is legal and justified? What relief the workman is entitled to?"

3. Claim statement was filed by Shri Dharam Pal pleading therein that he was engaged as gunman by the Contractor on 01.08.2010. He performed his duties at Tikri Kalan Depot of the Corporation regularly and punctually. He was made to work overtime, for which overtime allowance was not paid. He demanded overtime allowance for overtime work performed by him, which demand irked the contractor. His services were illegally terminated on 15.10.2011, without giving one months' notice or pay in lieu thereof. His salary for last several months remained unpaid. Action of termination of his services is illegal and void ab initio. He claims reinstatement in service of the Contractor with continuity and full back wages.

4. The Corporation contests the claim pleading that job for performance of works of intermittent/casual/ sporadic in nature, was assigned to the Contractor. The Contractor engaged his employees to carry out his contractual obligations. There was no relationship of employer and employee between the claimant and the Corporation. The Corporation has followed provisions of Contract Labour (Regulation and Abolition) Act, 1970. No cause has been made out against the Corporation. Claim put forth by the claimant is liable to be dismissed.

5. The Contractor dispels the claim pleading that the claimant resigned his services voluntarily on 30.03.2012 and accepted a sum of Rs. 3865.00 towards full and final settlement of his dues. Since the claimant himself resigned the job, there was no occasion for the Contractor to terminate his services. However, it is not disputed that the claimant was engaged as a security guard on 01.08.2010. His wages were paid in time. His services were not satisfactory. He used to behave indecently on many occasions. Since the Contractor has not taken any action to dispense with the services of the claimant, there was no occasion to give one months' notice or pay in lieu thereof, besides retrenchment compensation. Claim put forward is not maintainable and is liable to be dismissed, pleads the Contractor.

6. Claimant was called upon to adduce evidence to substantiate his claim. Instead of bringing evidence on record to establish his claim, claimant opted to abandon the proceedings since 25.04.2013. The Tribunal was constrained to proceed with the matter under rule 22 of Industrial Disputes (Central) Rules, 1957 and evidence of the claimant was closed.

7. Shri Ajay Pandey, tendered his affidavit as evidence on behalf of the Contractor. Since none was there on behalf of the claimant, opportunity could not be accorded to him to purify facts unfolded by Shri Pandey through an ordeal of cross examination. No other witness was examined by the Contractor. Corporation opted not to examine any witness.

8. Arguments were heard at the bar. None came forward on behalf of the claimant to present facts. Shri Ajit Singh, authorized representative, advanced arguments on behalf of the Contractor. Shri Naveen Kumar Chaudhary, authorized representative, raised submissions on behalf of the Corporation. I have given my careful consideration to the arguments advanced at the bar and cautiously

perused the record. My findings on issues involved in the controversy are as follows:-

9. Shri Ajay Pandey swears in his affidavit dated 13.03.2014, tendered as evidence, that the claimant joined services of the Contractor on 01.08.2010. His last drawn wages were Rs. 3865.00. Claimant resigned the job and took full and final settlement of his dues on 30.03.2012. Receipt was executed by him in that regard, which is Ex. MW1/1. He was paid his dues through cheque No.001001 dated 30.03.2012 drawn for a sum of Rs.3895.00 on Dwarka branch of Bank of Baroda. Photocopy of the said cheque is Ex.MW1/2. Facts unfolded by Shri Pandey remained un-assailed. An un-assailed testimony is to be accepted as true, unless it contains some inherent defects, having bearing on its veracity. Since facts unfolded by Shri Pandey nowhere suffers from any defect, which may give inference to the effect that he is not a reliable witness, his testimony is found to be acceptable.

10. As emerge out of his testimony, which gets re-affirmation from the documents, referred above, that the claimant tendered his resignation, accepted full and final settlement of his dues and left services of the Contractor for good. The fact that he accepted his full and final settlement of his dues makes it apparent that the claimant resigned from service on his own. These facts are sufficient to conclude that the claimant left his services on his own and marched away in search of greener pastures. Under these circumstances, the claimant cannot agitate that his services were terminated by the Contractor. It cannot be said that the services of the claimant were terminated/ discontinued by the Contractor with effect from 30.03.2012.

11. The Contractor could establish that it had not initiated any action to dispense with the services of the claimant. Hence, it cannot be said that the Contractor terminated his services, which act amounts to retrenchment, as defined in section 2(oo) of the Industrial Disputes Act, 1947 (in short the Act). By any stretch of imagination, it cannot be said that action of the Contractor, in accepting resignation of the claimant, amounts to retrenchment. Therefore, provisions of section 25F of the Act does not come into play.

12. No case has been projected by the claimant for application of provisions of section 25G and 25H of the Act. It is evident that the claimant is not entitled to any intervention by this Tribunal. When he himself resigned the job, no occasion would arise to assess legality and justifiability of action of the Contractor in that regard. The claimant is not entitled to any relief, not to talk of relief of reinstatement in service with continuity and full back wages. His claim statement is brushed aside. An award is, accordingly, passed. It be sent to the appropriate Government for publication.

Dated : 13.03.2014

Dr. R. K. YADAV, Presiding Officer

नई दिल्ली, 4 अप्रैल, 2014

का.आ. 1242.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार इंडियन ऑयल कारपोरेशन लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1, नई दिल्ली के पंचाट (संदर्भ संख्या 147/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 1-4-2014 को प्राप्त हुआ था ।

[सं. एल-30012/43/2012-आईआर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 4th April, 2014

S.O. 1242.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 147/ 2012) of the Central Government Industrial Tribunal/Labour Court No. 1, New Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Indian Oil Corporation Ltd. and their workman, which was received by the Central Government on 1/4/2014.

[No. L-30012/43/2012-IR(M)]

JOHAN TOPNO, Under Secy.

ANNEXURE

BEFORE DR. R. K. YADAV, PRESIDING OFFICER, CENTRAL GOVT. INDUSTRIAL TRIBUNAL NO. 1, KARKARDOOMA COURTS COMPLEX, DELHI

I.D. No. 147/2012

Shri Suraj Bhan,
S/o Sh. Lakhi Ram,
R/o Village Assanda,
Tehsil-Bahadurgarh,
Dist. Jhajjar, Harayana-124501 ...Workman

Versus

1. The Manager,
   Indane Gas Terminal,
   M/s. IOCL, Tikari Kalan,
   Delhi-110041.
2. M/s. Beehive Security and Surveillance,
   H.No.43, Rathi Enclave,
   New Roshan Vihar,
   Kakraula More, Najafgarh,
   New Delhi-110043 ...Management

AWARD

Indian Oil Corporation Ltd. (in short the Corporation) deals with procurement, export, import, refining, storage, transportation, sale and distribution of petroleum products

and crude oil. The Corporation owns and operates many refineries in India. It recruits its work force, in consonance with the recruitment rules. Jobs, which are of intermittent/ casual/sporadic in nature, are got performed through employees of a contractor. The Corporation engages security guards through a contractor, registered with Directorate General of Resettlement, Ministry of Defence, Government of India, New Delhi. Directorate General of Resettlement has formulated a scheme for benefit and employment of ex-servicemen and the contractors, registered with it, follow the said scheme. M/s Beehive Security and Surveillance (in short the Contractor) is one of security agencies, registered with the Directorate General of Resettlement and provides security guards to the Corporation.

2. Shri Suraj Bhan was engaged as a security guard by the Contractor to work at Tikri Kalan Depot, Delhi, of the Corporation. He served there since July 2011. In October 2011, he resigned his job and obtained full and final settlement of his dues from the Contractor. Subsequently, he perceived that the amount, paid to him by the Contractor towards full and final settlement of his dues, was meager. He raised a demand for reinstatement in service of the Contactor, which demand was not conceded to. Therefore, he raised a dispute before the Conciliation Officer. Since his claim was contested by the Contractor, conciliation proceedings ended into a failure. On consideration of failure report, submitted by the Conciliation Officer, the appropriate Government referred the dispute to this Tribunal for adjudication, vide order No.L-30012/43/2012-IR(M), New Delhi dated 28.10.2012 with following terms:

> "Whether action of the management of M/s Beehive Security & Surveillance in terminating services of Shri Suraj Bhan, S/o Shri Lakhi Ram from Indian Oil Corporation Depot, Tikri Kalan, Delhi, with effect from 19.10.2011 is legal and justified? What relief the workman is entitled to?"

3. Claim statement was filed by Shri Suraj Bhan pleading therein that he was engaged as gunman by the Contractor on 01.07.2011. He performed his duties at Tikri Kalan Depot of the Corporation regularly and punctually. He was made to work overtime, for which overtime allowance was not paid. He demanded overtime allowance for overtime work performed by him, which demand irked the contractor. His services were illegally terminated on 10.09.2011, without giving one months' notice or pay in lieu thereof. His salary for last several months remained unpaid. Action of termination of his services is illegal and void ab initio. He claims reinstatement in service of the Contractor with continuity and full back wages.

4. The Corporation contests the claim pleading that job for performance of works of intermittent/casual/ sporadic in nature, was assigned to the Contractor. The Contractor engaged his employees to carry out his contractual obligations. There was no relationship of employer and employee between the claimant and the Corporation. The Corporation has followed provisions of Contract Labour (Regulation and Abolition) Act, 1970. No cause has been made out against the Corporation. Claim put forth by the claimant is liable to be dismissed.

5. The Contractor dispels the claim pleading that the claimant resigned his services voluntarily on 04.10.2011 and accepted a sum of Rs.6441.00 towards full and final settlement of his dues. Since the claimant himself resigned the job, there was no occasion for the Contractor to terminate his services. Claimant was engaged as a security guard on 01.07.2011, as projected by the Contractor. His wages were paid in time. His services were not satisfactory. He used to behave indecently on many occasions. Since the Contractor has not taken any action to dispense with the services of the claimant, there was no occasion to give one months' notice or pay in lieu thereof, besides retrenchment compensation. Claim put forward is not maintainable and is liable to be dismissed, pleads the Contractor.

6. Claimant was called upon to adduce evidence to substantiate his claim. Instead of bringing evidence on record to establish his claim, claimant opted to abandon the proceedings since 25.04.2013. The Tribunal was constrained to proceed with the matter under rule 22 of Industrial Disputes (Central) Rules, 1957 and evidence of the claimant was closed.

7. Shri Ajay Pandey, tendered his affidavit as evidence on behalf of the Contractor. Since none was there on behalf of the claimant, opportunity could not be accorded to him to purify facts unfolded by Shri Pandey through an ordeal of cross examination. No other witness was examined by the Contractor. Corporation opted not to examine any witness.

8. Arguments were heard at the bar. None came forward on behalf of the claimant to present facts. Shri Ajit Singh, authorized representative, advanced arguments on behalf of the Contractor. Shri Naveen Kumar Chaudhary, authorized representative, raised submissions on behalf of the Corporation. I have given my careful consideration to the arguments advanced at the bar and cautiously perused the record. My findings on issues involved in the controversy are as follows:-

9. Shri Ajay Pandey swears in his affidavit dated 13.03.2014, tendered as evidence, that the claimant joined services of the Contractor on 01.07.2011. His last drawn wages were Rs.6441.00. Claimant resigned the job and took full and final settlement of his dues on 04.10.2011.

Receipt was executed by him in that regard, which is Ex. MW1/1. He was paid his dues of Rs. 6441.00 in cash. Facts unfolded by Shri Pandey remained un-assailed. An un-assailed testimony is to be accepted as true, unless it contains some inherent defects, having bearing on its veracity. Since facts unfolded by Shri Pandey nowhere suffers from any defect, which may give inference to the effect that he is not a reliable witness, his testimony is found to be acceptable.

10. As emerge out of his testimony, which gets re-affirmation from the documents, referred above, the claimant tendered his resignation, accepted full and final settlement of his dues and left services of the Contractor for good. The fact that he accepted his full and final settlement of his dues makes it apparent that the claimant resigned from service on his own. These facts are sufficient to conclude that the claimant left his services on his own and marched away in search of greener pastures. Under these circumstances, the claimant cannot agitate that his services were terminated by the Contractor. It cannot be said that the services of the claimant were terminated/ discontinued by the Contractor with effect from 10.09.2011.

11. The Contractor could establish that it had not initiated any action to dispense with the services of the claimant. Hence, it cannot be said that the Contractor terminated his services, which act amounts to retrenchment, as defined in section 2(oo) of the Industrial Disputes Act, 1947 (in short the Act). By any stretch of imagination, it cannot be said that action of the Contractor, in accepting resignation of the claimant, amounts to retrenchment. Therefore, provisions of section 25F of the Act does not come into play.

12. No case has been projected by the claimant for application of provisions of section 25G and 25H of the Act. It is evident that the claimant is not entitled to any intervention by this Tribunal. When he himself resigned the job, no occasion would arise to assess legality and justifiability of action of the Contractor in that regard. The claimant is not entitled to any relief, not to talk of relief of reinstatement in service with continuity and full back wages. His claim statement is brushed aside. An award is, accordingly, passed. It be sent to the appropriate Government for publication.

Dated : 13.03.2014

Dr. R. K. YADAV, Presiding Officer

नई दिल्ली, 4 अप्रैल, 2014

का.आ. 1243.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार इंडियन ऑयल कारपोरेशन लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1, नई दिल्ली के पंचाट (संदर्भ संख्या 144/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 1-4-2014 को प्राप्त हुआ था ।

[सं. एल-30012/45/2012-आईआर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 4th April, 2014

S.O. 1243.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 144/ 2012) of the Central Government Industrial Tribunal/Labour Court No. 1, New Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Indian Oil Corporation Ltd. and their workman, which was received by the Central Government on 1/4/2014.

[No. L-30012/45/2012-IR(M)]

JOHAN TOPNO, Under Secy.

ANNEXURE

BEFORE DR. R. K. YADAV, PRESIDING OFFICER, CENTRAL GOVT. INDUSTRIAL TRIBUNAL NO. I, KARKARDOOMA COURTS COMPLEX, DELHI

I.D. No. 144/2012

Shri Jai Bhagwan,
S/o Sh. Deep Chand,
R/o VPO Ladravan,
Tehsil-Bahadurgarh,
Dist. Jhajjar, Harayana-124503 ...Workman

Versus

1. The Manager,
   Indane Gas Terminal,
   M/s. IOCL, Tikari Kalan,
   Delhi-110041.

2. M/s Beehive Security and Surveillance,
   H.No.43, Rathi Enclave,
   New Roshan Vihar,
   Kakraula More, Najafgarh,
   New Delhi-110043 ...Management

AWARD

Indian Oil Corporation Ltd. (in short the Corporation) deals with procurement, export, import, refining, storage, transportation, sale and distribution of petroleum products and crude oil. The Corporation owns and operates many refineries in India. It recruits its work force, in consonance with the recruitment rules. Jobs, which are of intermittent/ casual/sporadic in nature, are got performed through employees of a contractor. The Corporation engages security guards through a contractor, registered with Directorate General of Resettlement, Ministry of Defence,

Government of India, New Delhi. Directorate General of Resettlement has formulated a scheme for benefit and employment of ex-servicemen and the contractors, registered with it, follow the said scheme. M/s. Beehive Security and Surveillance (in short the Contractor) is one of security agencies, registered with the Directorate General of Resettlement and provides security guards to the Corporation.

2. Shri Jai Bhagwan was engaged as a security guard by the Contractor to work at Tikri Kalan Deport, Delhi, of the Corporation. He served there since August 2010. In March 2012, he resigned his job and obtained full and final settlement of his dues from the Contractor. Subsequently, he perceived that the amount, paid to him by the Contractor towards full and final settlement of his dues, was meager. He raised a demand for reinstatement in service of the Contactor, which demand was not conceded to. Therefore, he raised a dispute before the Conciliation Officer. Since his claim was contested by the Contractor, conciliation proceedings ended into a failure. On consideration of failure report, submitted by the Conciliation Officer, the appropriate Government referred the dispute to this Tribunal for adjudication, vide order No.L-30012/45/2012-IR(M), New Delhi dated 18.10.2012 with following terms:

> "Whether action of the management of M/s. Beehive Security & Surveillance in terminating services of Shri Jai Bhagwan, S/o Shri Deep Chand from Indian Oil Corporation Depot, Tikri Kalan, Delhi, with effect from 22.08.2011 is legal and justified? What relief the workman is entitled to?"

3. Claim statement was filed by Shri Jai Bhagwan pleading therein that he was engaged as gunman by the Contractor on 01.08.2010. He performed his duties at Tikri Kalan Depot of the Corporation regularly and punctually. He was made to work overtime, for which overtime allowance was not paid. He demanded overtime allowance for overtime work performed by him, which demand irked the contractor. His services were illegally terminated on 26.08.2011, without giving one months' notice or pay in lieu thereof. His salary for last several months remained unpaid. Action of termination of his services is illegal and void ab initio. He claims reinstatement in service of the Contractor with continuity and full back wages.

4. The Corporation contests the claim pleading that job, for performance of works of intermittent/casual/ sporadic in nature, was assigned to the Contractor. The Contractor engaged his employees to carry out his contractual obligations. There was no relationship of employer and employee between the claimant and the Corporation. The Corporation has followed provisions of Contract Labour (Regulation and Abolition) Act, 1970. No cause has been made out against the Corporation. Claim put forth by the claimant is liable to be dismissed.

5. The Contractor dispels the claim pleading that the claimant resigned his services voluntarily on 30.03.2012 and accepted a sum of Rs.7085.00 towards full and final settlement of his dues. Since the claimant himself resigned the job, there was no occasion for the Contractor to terminate his services. However, it is not disputed that the claimant was engaged as a security guard on 01.08.2010. His wages were paid in time. His services were not satisfactory. He used to behave indecently on many occasions. Since the Contractor has not taken any action to dispense with the services of the claimant, there was no occasion to give one months' notice or pay in lieu thereof, besides retrenchment compensation. Claim put forward is not maintainable and is liable to be dismissed, pleads the Contractor.

6. Claimant was called upon to adduce evidence to substantiate his claim. Instead of bringing evidence on record to establish his claim, claimant opted to abandon the proceedings since 25.04.2013. The Tribunal was constrained to proceed with the matter under rule 22 of Industrial Disputes (Central) Rules, 1957 and evidence of the claimant was closed.

7. Shri Ajay Pandey, tendered his affidavit as evidence on behalf of the Contractor. Since none was there on behalf of the claimant, opportunity could not be accorded to him to purify facts unfolded by Shri Pandey through an ordeal of cross-examination. No other witness was examined by the Contractor. Corporation opted not to examine any witness.

8. Arguments were heard at the bar. None came forward on behalf of the claimant to present facts. Shri Ajit Singh, authorized representative, advanced arguments on behalf of the Contractor. Shri Naveen Kumar Chaudhary, authorized representative, raised submissions on behalf of the Corporation. I have given my careful consideration to the arguments advanced at the bar and cautiously perused the record. My findings on issues involved in the controversy are as follows:-

9. Shri Ajay Pandey swears in his affidavit dated 13.03.2014, tendered as evidence, that the claimant joined services of the Contractor on 01.08.2010. His last drawn wages were Rs.7085.00. Claimant resigned the job and took full and final settlement of his dues on 30.03.2012. Receipt was executed by him in that regard, which is Ex. MW1/1. He was paid his dues through cheque No.1003 dated 30.03.2012 drawn for a sum of Rs.7085.00 on Dwarka branch of Bank of Baroda. Photocopy of the said cheque is Ex. MW1/2. Facts unfolded by Shri Pandey remained un-assailed. An un-assailed testimony is to be accepted as true, unless it contains some inherent defects, having bearing on its veracity. Since facts unfolded by Shri Pandey nowhere suffers from any defect, which may give inference to the effect that he is not a reliable witness, his testimony is found to be acceptable.

10. As emerge out of his testimony, which gets re-affirmation from the documents, referred above, the claimant tendered his resignation, accepted full and final settlement of his dues and left services of the Contractor for good. The fact that he accepted his full and final settlement of his dues makes it apparent that the claimant resigned from service on his own. These facts are sufficient to conclude that the claimant left his services on his own and marched away in search of greener pastures. Under these circumstances, the claimant cannot agitate that his services were terminated by the Contractor. It cannot be said that the services of the claimant were terminated/ discontinued by the Contractor with effect from 30.03.2012.

11. The Contractor could establish that it had not initiated any action to dispense with the services of the claimant. Hence, it cannot be said that the Contractor terminated his services, which act amounts to retrenchment, as defined in section 2(oo) of the Industrial Disputes Act, 1947 (in short the Act). By any stretch of imagination, it cannot be said that action of the Contractor, in accepting resignation of the claimant, amounts to retrenchment. Therefore, provisions of section 25F of the Act does not come into play.

12. No case has been projected by the claimant for application of provisions of section 25G and 25H of the Act. It is evident that the claimant is not entitled to any intervention by this Tribunal. When he himself resigned the job, no occasion would arise to assess legality and justifiability of action of the Contractor in that regard. The claimant is not entitled to any relief, not to talk of relief of reinstatement in service with continuity and full back wages. His claim statement is brushed aside. An award is, accordingly, passed. It be sent to the appropriate Government for publication.

Dated : 13.03.2014

Dr. R. K. YADAV, Presiding Officer

नई दिल्ली, 4 अप्रैल, 2014

का.आ. 1244.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार लाइफ इन्शुरेन्स कारपोरेशन ऑफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 06/2010) को प्रकाशित करती है, जो केन्द्रीय सरकार को 1-4-2014 को प्राप्त हुआ था ।

[सं. एल-17012/56/2008-आईआर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 4th April, 2014

S.O. 1244.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 06/2010) of the Central Government Industrial Tribunal/Labour Court, Nagpur, now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Life Insurance Corporation of India and their workman, which was received by the Central Government on 1/4/2014.

[No. L-17012/56/2008-IR(M)]

JOHAN TOPNO, Under Secy.

ANNEXURE

BEFORE SHRI J. P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/06/2010

Date : 19 .02.2014

Party No. 1 (a) : The Manager,
LIC of India, Jeevan Prakash,
Adalat Road, Aurangabad

(b) : The Branch Manager,
LIC, Ambejogai Branch,
Ambejogai, Distt. Beed(MS).

Versus

Party No. 2 : Shri Amol Sanjay Sarvade,
R/o Mukundraj Colony,
Behind Police Station,
Ambejogai Beed (MS).

AWARD

(Dated: 19th February, 2014)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of LIC of India and their workman, Shri Amol Sanjay Sarvade, for adjudication, as per letter No. L-17012/ 56/2008-IR (M) dated 06.09.2010, with the following schedule:-

> "Whether the action of the management of Life Insurance Corporation of India in alleged illegal dismissal from service of Shri Amol Sanjay Sarvade, Temporary sub-staff w.e.f. 31.12.2007 is legal and justified? What relief the workman concerned is entitled to and from which date?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the workman, Shri Amol Sanjay Sarvade , ('the workman" in short), filed the statement of claim and the management of LIC of India ("Party No. 1" in short) filed their written statement.

The case of the workman as presented in the statement of claim is that he has passed SSC and Agriculture diploma and his name was registered in the Employment Exchange, Beed and the party No.1 called for the names of the eligible candidates from the Employment Exchange as it had vacant posts of sub-staff and as he was eligible for the post of sub-staff, his name was recommended by the Employment Exchange to the office of party No.1 and he appeared in the written test as well as oral test along with other candidates and he was selected as temporary sub-staff by party No.1 as per order dated 16.04.2007 and the party No.1 issued the appointment order dated 16.04.2007 for his appointment for the period from 16.04.2007 to 19.07.2007 on salary of Rs. 4105 per month in Ambejogai branch and thereafter, he was engaged by party No.1 as a sub-staff for the period from 10.07.2007 to 30.08.2007 on daily wages of Rs.50 and he was again appointed by party No.1 by order dated 07.09.2007 for a period of 78 days on salary of Rs.4105 per month and he was again engaged by party No.1 on daily wages of Rs. 50 from 24.11.2007 to 30.12.2007 and he worked continuously from 16.04.2007 to 30.12.2007 without any break and he worked for 260 days from 16.04.2007 to 30.12.2007 and the party No.1 illegally terminated his services from 31.12.2007 without any reason and though he worked for more than 240 days in the preceding 12 months of the date of the termination, the party no.1 neither gave one month's notice nor one month's pay in lieu of notice or retrenchment compensation to him, before termination of his services as required under section 25-F of the Act and as such, his termination dated 31.12.2007 is illegal.

It is further pleaded by the workman that while terminating the services, party No.1 did not adhere to the seniority list and retained junior employees in service and more than 100 similar employees were working in the office of the party No.1 and party No.1 did not obtain any permission from the appropriate Government and failed to follow the mandatory provisions of sections 25-G, 25-H and 25-N of the Act, while terminating his services.

It is also pleaded by the workman that as the Central Government declined to refer the dispute for adjudication, even after submission of the failure report by the Conciliation Officer, he filed Writ Petition No.152/2010, before the Hon'ble High Court, Judicature of Bombay, Bench of Aurangabad and by order dated 10.08.2010, the Hon'ble High Court allowed the writ petition and directed the Government to refer the dispute to the Tribunal for adjudication and accordingly, the Central Government referred the dispute to this Tribunal for adjudication.

The workman has prayed to quash and set aside the order of termination dated 31.12.2007 and for a direction to the party No.1 to reinstate him in service with continuity and full back wages.

3. The party no.1 in its written statement has pleaded inter-alia that Life Insurance Corporation of India ("LIC" in short) is a body corporate established under the provision of section 3 of the Life Insurance Corporation Act, 1956 ("Insurance Act" in short) and in accordance with the provisions of section 23(1) of the Insurance Act, it is empowered to engage such number of employees as it deems fit, to carry out its functions and business and under section 48 of the Insurance Act, the Central Government is empowered to make rules in respect of the aforesaid enactment and in accordance with the provisions of section 49 of the Insurance Act, LIC has framed regulations which are known as Life Insurance Corporation of India (Staff) Regulations, 1960 ("the Regulations" in short) and section 49 of the Insurance Act before its amendment by the amended Act of 1981, empowered the LIC to make regulation providing for the terms and conditions of services of the employees of LIC including the transferred employees and accordingly, the LIC framed the regulations and as a consequence of the Amendment Act amongst others, the Central Government was empowered to make rules to provide for the terms and conditions of services of the employees of LIC, vide clause (cc) of sub-section 2 of section 48 and the Regulations and other provisions in force, immediately before the commencement of the Amendment Act shall be deemed to be the Rules made by the Central Government under section 48(2) (cc) and (c) and the Rules made by the Central Government shall have the effect notwithstanding anything contained in, among others, the Industrial Disputes Act, 1947 or any other law for the time being in force and the Regulations are having statutory effect and thus the Regulations are having overriding effect notwithstanding anything contained in the Act or any other enactment, settlement or award for the time being in force and Regulation 4 of the Regulations empowers the Chairman of LIC to issue instructions from time to time to carry out the provisions of the Regulations and Regulation 8(1)of the Regulations provides that, "Notwithstanding anything contained in these Regulations, a Divisional Manager may employ staff in class III and IV, on a temporary basis subject to such general or special directions as may be issued by the Chairman from time to time and according to Regulation 8(2), "no person appointed under sub-regulation (1) shall only by reason of such appointment be entitled to absorption in the service of LIC or claim preference for recruitment to any post".

It is further pleaded by the party No.1 that the workman was employed on temporary basis for a specified period and after expiry of such temporary appointment period, his services stood automatically terminated, due to non renewal of the temporary period of appointment and as such, the termination of the workman did not amount to retrenchment and the provision of Section 25-F of the Act were not applicable to his case and therefore, the reference is incompetent in law.

It is also pleaded by the party No.1 that it was required to appoint persons in the category of class IV sub-staff on purely temporary basis and as such, names of candidates, who fulfilled minimum eligibility conditions of qualification and age were called for from the Employment Exchange and the name of the workman and some other candidates were sponsored by the Employment Exchange, Beed for preparation of the panel of temporary staff and accordingly, a panel of 22 temporary peons was prepared, basing on the certificates and oral interview and the name of the workman was at serial no.15 in the said list and the letter of appointment dated 16.04.2007 issued to the workman was specifically for a period of 85 days from 16.04.2007 to 09.07.2007 and in para 5(V) of the said letter, it was categorically mentioned that appointment given to him was purely on temporary basis and it would come to an end on expiry of the said period as mentioned in para 2 thereof, or at any time prior to that, in case of necessity to terminate such appointment, without assigning any reason and in para 5(VI) of the said letter, it was stated that if the terms and conditions mentioned there in are acceptable to him, then to report for duties and his employment automatically came to an end on 09.07.2007, after expiry of the period of employment and the workman was not engaged as sub staff on daily wages of Rs. 50 from 10.07.2007 to 30.08.2007 as claimed and the workman was again temporarily appointed vide letter dated 07.09.2007 on the terms and conditions similar to his first appointment, for 85 days from 07.09.2007 to 23.11.2007 and his such employment automatically ended on the expiry of the period of appointment.

It is also pleaded by the party No.1 that petty works like filing of dockets, arranging of racks, shifting of racks and cup boards etc. was periodically available in its office and the workman was engaged to do such petty works from 27.08.2007 to 30.08.2007, 24.11.2007 to 30.11.2007, 21.12.2007 to 30.12.2007 and on 10.07.2007 and he was paid Rs. 1500, Rs. 350, Rs. 500 and Rs.1000 respectively under vouchers and the workman did not work continuously from 16.04.2007 to 30.12.2007 and he did not work for 240 days in the preceding 12 months of the date of termination and the provisions of the Act are not applicable and the workman is not entitled to any relief.

4. In the rejoinder, the workman has pleaded that he has claimed the work which available before the date of his termination and he has not claim regularisation and permanency and therefore, the Act, Regulations and service Rules of party No.1 and the judgment of the Hon'ble Courts referred in the written statement are not applicable to his case.

5. Both the Parties have led oral evidence in support of their respective claims, besides placing reliance on documentary evidence. The workman, who has examined himself as a witness, in his examination-in-chief on affidavit has reiterated the facts mentioned in the statement of claim.

In his cross-examination, the workman has admitted that he was appointed as a temporary peon in LIC and there was no written test for his appointment and there was no medical test before his temporary appointment. The workman has further admitted that in Ext.-I, it has been mentioned that his appointment was on temporary basis and for specific period and in his appointment letter, it has been clearly mentioned that he would not be entitled to any other benefit for or on account of the employment on temporary basis and by reason of his temporary appointment, he would not be entitled to any preference for recruitment to any post or claim absorption/ regularisation in the service of the corporation and the appointment shall come to an end on the expiry of the period mentioned in para 2 or any time prior to that, if it becomes necessary to terminate such appointment, without assigning any reason there for and he accepted all the conditions mentioned in his temporary appointment order and joined in service and his first appointment was for 85 days and his second appointment was for 78 days and except Exts. W-I and W-II, no other appointment letter was issued to him by the LIC and he has not filed a single document in support of his claim that he worked with LIC on daily wages of Rs. 50.

6. One Hemant Baburao Mali, a Manager (Legal & Housing and House Property Finance Department) of LIC has been examined as a witness on behalf of the party no.1. The evidence of the witness for the party no.1 is in the same line as taken by party no.1 in the written statement.

In his cross-examination, this witness has admitted that his evidence on affidavit is based on documents relating to the workman and the workman did not work under him directly and no seniority list of temporary workmen employed in LIC was prepared. This witness has further stated that as other candidates in the panel were there, the workman was not engaged again after 30.12.2007.

7. At the time of argument, it was submitted by the learned advocate for party no.1 that the workman was appointed purely on temporary basis for a fixed period, mentioned in his appointment letters and after expiry of the said period, his appointment automatically came to an end and as such, the termination of the workman does not amount to retrenchment as defined in the Act and in view of the Rules made by Central Government under clause (cc) of section 48 (2) of the Insurance Act, the provisions of the Act or any other law for the time being in force are not applicable to the corporation in the matter to which the provisions of Staff Regulations, 1960 apply and in case of conflict between the Act and the Staff Regulations, the Staff Regulations shall prevail and Regulation 8 of Staff Regulation deals with temporary staff and empowers the authorities mentioned therein to employ person on temporary basis to the post of Class III

& IV and it further provides that no person appointed on temporary basis shall be entitled to claim absorption in service or preference for recruitment to any post and as such, the reference is devoid of any merit and is liable to be rejected. In support of such contentions, reliance has been placed on the decisions reported in AIR 1982 SC-1126(A.V. Nachane Vs. Union of India)), 1994 SC-2184 (LIC Vs. Asha Ambekar) and the judgment of the Hon'ble High Court of Judicature at Bombay in W.P. No. 1655 of 2002 (Life Insurance Corporation of India Vs. Ravindra Vyenkat ladhe and others).

It is to be mentioned that no argument was advanced from the side of the workman.

8. Perused the appointment orders of the workman, Exts. W-I and W-II, the other documents on record and the oral evidence adduced by the parties, it is found that the appointment of the workman was made for a specific period as per Regulation 8 of the Staff Regulation 1960 and the appointment was made on temporary basis. It is also found from the said orders that it was specifically mentioned therein that by such appointment, the employee would not be entitled to any other benefit or to be entitled to any preference for recruitment to any post or claim absorption/regularization in the service of the corporation and the appointment should come to an end on the expiry of the period mentioned in the appointment order. It is also found from the materials on record that accepting the conditions of the appointment orders, the workman joined with the corporation. In view of the definition of "retrenchment" as given in Section 2(oo) of the Act, the termination of the services of the workman by afflux of period as stipulated in his appointment letters doesn't amount to "retrenchment" under the Act and the status of the workman was purely temporary, under regulation 8 of Staff Regulation of the corporation. Hence, the provisions of the Act including provision of Sections 25-F, 25-G, 25-H and 25-N, of the Act are not applicable to the case of the workman.

9. The decision of the Hon'ble High Court of Bombay in WP no. 1655 of 2002 is a direct decision in regard to the point of controversy. The Hon'ble High Court of Bombay in its decision have stated as follows:

"Now in so far as the present case is concerned, it would be necessary advert first and for most to the Life Insurance Staff Regulations of 1960. These Regulations were initially framed by the corporation with the previous approval of the Central Government in exercise of powers conferred by Section 49 (2) of the Life Insurance Corporation Act, 1956. Regulation 8 in relation to temporary Staff provides thus:

Temporary Staff

-8(1) Notwithstanding anything contained in these Regulations, a Divisional Manager may employ staff in Classes III and IV on a temporary basis subject to such general or special directions as may be issued by the Chairman from time to time.

-(2) No person appointed under sub-regulation (1) shall only by reason of such appointment be entitled to absorption in the service of the Corporation or claim preference for recruitment to any post.

Regulation 4 provides that the Chairman may, from time to time, issue such instructions or directions as may be necessary to give effect to, and carry out, the provisions of the regulations and in order to secure effective control over the staff employed in the Corporation. In so far as the members of the temporary staff are concerned, sub-regulation (2) of Regulation 8 specifically provided that no person appointed under sub-regulation (1) shall be entitled to claim absorption or preference for recruitment only by reason of such appointment.

Parliament amended the provisions of the Life Insurance Corporation Act, 1956 by Amending Act 1 of 1981. As a result of the amendment, clause (cc) was inserted in sub-section (2) of Section 48 which confers power upon the Central Government to make rules to carry out the provisions of the Act. By and as a result of clause (cc) as inserted, the Central Government is empowered to provide for the terms and conditions of service of the employees of the corporation. The rule-making power in Section 48 (2) (cc) extends to the following:

> "(cc) the terms and conditions of service of the employees and agents of the Corporation, including those who became employees and agents of the Corporation on the appointed day under this Act"

Sub-section (2A) was also introduced in Section 48 by the Amending Act and it provides as follows:

> (2A) The regulations and other provisions as in force immediately before the commencement of the life Insurance Corporation (Amendment) Act, 1981, with respect to the terms and conditions of service of employees and agents of the Corporation including those who became employees and agents of the Corporation on the appointed day under this Act, Shall be deemed to be rules made under clause (cc) of Sub-section (2) and shall, subject to the other provisions of this section, have effect accordingly" (emphasis supplied).

As a result of Sub-section (2A), the Staff Regulations that were framed in 1960 are deemed to be Rules made under clause (cc) of Sub-section (2) of Section 48.

Sub-section (2B) of Section 48, as amended, provides that the rule making power that is conferred by clause (cc) of Sub-section (2) shall include the power to give retrospective effect to the rules ; to amend the regulations and the provisions referred to in sub-section (2A) with retrospective effect from a date not prior to 20th June 1999. Sub-section (2C) of Section 48 has a significant bearing in the present case and provides thus:

"(2C) The provisions of clause (cc) of sub-section (2) and sub-section (2B) and any rules made under the said clause (cc) shall have effect, and any such rule made with retrospective effect from any date shall also be deemed to have had effect from that date, notwithstanding any judgment, decree or order of any court, tribunal or other authority and notwithstanding anything contained in the Industrial Disputes Act, 1947 (14 of 1947), or any other law or any agreement, settlement, award or any instrument for the time being in force". (emphasis supplied)

The effect of sub-section (2C) is to impart overriding effect to the provisions of clause (cc) of sub-section (2) as well as to any rules which have been made under clause (cc) notwithstanding any judgment, decree or any order of any Court or Tribunal or other authority and notwithstanding anything contained in the Industrial Disputes Act, 1947 or any other law or any other agreement, settlement or other instrument for the time being in force.

Regulations 8 of the Staff Regulation of 1960 which empowers the authority nominated therein to recruit class III and IV personnel on a temporary basis is, therefore, a rule within the meaning of Section 48(2)(cc). That is specifically provided for in sub-section 2A. A person appointed on a temporary basis under sub-regulation (1) of Regulation 8 is not entitled to absorption in the services of the Corporation or to claim preference for recruitment to any post. In exercise of the power conferred by Regulation 4, statutory instructions were issued by the Chairman of the Corporation on 28th June, 1993 defining the method and manner of recruitment of temporary staff. These rules have overriding effect over the provisions of the Industrial Disputes Act, 1947. Sub-section 2C of Section 48 specifically provides so.

The amended provisions of the Life Insurance Corporation Act, 1956 came up for consideration before a Bench of three Learned Judges of the Supreme Court in M. Venugopal Vs. Divisional Manager, Life Insurance Corporation of India, Machilipatnam (1994) 2 SCC 323. The Supreme Court held that as a result of the statutory fiction that is created by the provisions of sub-section (2A), regulations relating to the terms and conditions of service of employees and agents of the Corporation framed under Section 48 (2) (bb) shall be deemed now to be Rules under Section 48 (2)(cc) and all "such rules shall have overriding effect over the provisions contained in the Industrial Disputes Act, 1947 so far as the terms and conditions of employment of such employees who also conform to the requirement of the definition of "workman" under the Industrial Disputes Act, 1947 are concerned". Construing these provisions, the Supreme Court held that the termination of the services of a person appointed as probationer under Regulation 14 shall be deemed to be in pursuance of the rules framed under Section 48 (2) (cc) and would have overriding effect over Section 2(oo) and Section 25F of the Industrial Disputes Act, 1947. The Court held thus:

"The amendments introduced in Section 48 of the Corporation Act have clearly excluded the provisions of the Industrial Disputes Act so far as they are in conflict with the rules framed under section 48 (2) (cc). The result whereof will be that termination of the service of the appellant shall not be deemed to be "retrenchment" within the meaning of section 2(oo) even if sub-section (bb) had not been introduced in the said section. Once Section 2 (oo) is not attracted, there is no question of application of Section 25-F on the basis of which the termination of the service of the appellant can be held to be invalid. The termination of the service of the appellant during the period of probation is in terms of the order of appointment read with Regulation 14 of the Regulations, which shall be deemed to be now Rules under Section 48(2)(cc) of the Corporation Act".

The Supreme Court noted that the constitutional validity of the Amending Act of 1981 was upheld in A.V. Nachane Vs. Union of India (1982) 1 SCC 205. The Court held that the wisdom of the legislature in either extending the protection of the provisions of the Industrial Disputes Act, 1947, or denying the same cannot be assessed by the Court unless it is held to be violative of any of the provisions of the Constitution.

"Earlier such employees used to be governed by the regulations framed by the Corporation under Section 49 of the Corporation Act as well as by the provisions of the Industrial Disputes Act, being "workman" within the meaning of that Act. It was up to them to enforce the rights or remedies in terms of the regulation so framed under the Corporation Act or in accordance with the provisions of the Industrial Disputes Act. But after the amendment introduced by the Parliament in Section 48, the employees of the Corporation shall not be entitled to protections to which they were entitled before the coming into force of the amendment aforesaid. The amendments cannot be held to be violative of Article 14 of the Constitution merely on the grounds that a section of the employees of the Corporation had the benefit or protection of the provisions of the Industrial Disputes Act, which now they have been deprived of. The wisdom of the legislature in extending the protection of the provisions of the Industrial Disputes Act or denying the same cannot be judged by the courts unless any such step held to be violative of any of the provisions of the Constitution".

"The decision of the Supreme Court concludes the present case. The Tribunal was in error in coming to the conclusion that the order of retrenchment must fail for failure to comply with the provisions of Section 25-F of the Industrial Disputes Act, 1947. The workmen were temporary workmen. Under the terms of their engagement,

their services could be dispensed with and the power to dispense with a member of the temporary staff is implicit in Regulation 8 of the Staff Regulations of 1960. Upon the enforcement of the Amending Act of 1981, the regulation acquired the character of a rule framed under Section 48(2)(cc). The rule overrides the provisions of the Industrial Disputes Act, 1947 by virtue of the provisions of Section 48 (2C)".

10. Applying the principles enunciated by the Hon'ble Court as mentioned above to the present case at hand, it is found that Regulation 8 of Life Insurance Staff Regulations, 1960 is applicable to LIC and upon the enforcement of the Amending Act of 1981, the regulation acquired the character of a rule framed under Section 48 (2)(cc) and the said rule overrides the provisions of the Act and other laws for the time being in force, by virtue of the provisions of Section 48 (2)(2C) of the Life Insurance Corporation Act and as such, the workman is not entitled for any relief. Hence, it is ordered:

ORDER

The action of the management of Life Insurance Corporation of India in dismissing Shri Amol Sanjay Sarvade, Temporary sub-staff from services w.e.f. 31.12.2007 is legal and justified. The workman is not entitled to any relief.

J. P. CHAND, Presiding Officer

नई दिल्ली, 4 अप्रैल, 2014

का.आ. 1245.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार इंडियन ऑयल कारपोरेशन लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, चंडीगढ़ के पंचाट (संदर्भ संख्या 26/2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 1-4-2014 को प्राप्त हुआ था ।

[सं. एल-30011/36/2009-आईआर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 4th April, 2014

S.O. 1245.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 26/2009) of the Central Government Industrial Tribunal/Labour Court No. 2, Chandigarh now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Indian Oil Corporation Limited and their workman, which was received by the Central Government on 1/4/2014.

[No. L-30011/36/2009-IR(M)]

JOHAN TOPNO, Under Secy.

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Present : SRI KEWAL KRISHAN, Presiding Officer

Case No. I.D. No. 26/2009

Registered on 15.2.2010

The Vice President,
Petroleum Workers' Union,
Plot No.3-A, Sector 19A,
Chandigarh ...Petitioner

Versus

The DGM (HR), IOCL,
Marketing Division, Yusuf Sarai,
New Delhi. ...Respondents

APPEARANCES :

For the Workman : Ex parte.

For the Management : Sh. Paul S. Saini, Adv.

AWARD

(Passed on 21.2.2014)

Central Government vide Notification No. L-30011/36/2009-IR(M)) Dated 2.2.2010, by exercising its powers under Section 10, Sub-section (1) Clause (d) and Sub-section (2-A) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'Act') has referred the following Industrial dispute for adjudication to this Tribunal:-

> "Whether the action of the management of M/s. Indian Oil Corporation in denying the reinstatement of Late Sh. Dharam Singh, E-Tank Truck Driver at par with his co-employee, Sh. Darshan Singh, Helper, charge-sheeted with the same misconduct as well as faced the similar charge of offence in a criminal case, is just, fair and legal? What relief, the legal heir of the deceased employee is entitled to and from which date?"

The claimant filed statement of claim pleading that Dharam Singh was an Tank Truck driver at Ambala and was issued a charge-sheet dated 21.4.1995 for alleged misconduct of theft, fraud etc. and also a case was registered against him and a Co-helper Darshan Singh. Both Dharam Singh and Darshan Singh were convicted by the Lower Court, but the order was set aside by the Appellate Court vide order dated 14.7.1999. That Dharam Singh died on 26.3.2000. On his acquittal, Darshan Singh, Co-helper was reinstated in service. Since both Dharam Singh and Darshan Singh were on the same footing and were acquitted by the Court and since Darshan Singh has been reinstated, Dharam Singh was also entitled to

reinstatement with all the consequential benefits. Since he has died the benefits accrued to him, be paid to the applicant being his widow.

Respondent management filed written reply pleading that though both Dharam Singh and Darshan Singh were acquitted by the Court but in departmental inquiry both were found guilty and consequentially dismissed. The age of superannuation of Dharam Singh was 31.10.1999 and he made a representation for his reinstatement only after his superannuation and he expired on 26.3.2000. After his death, all the terminal benefits including employees contribution were paid to his widow. That Dharam Singh was not entitled to be reinstated as a matter of right and the applicant cannot claim for relief.

Initially the applicant was represented by an advocate who stopped appearing and she was proceeded against ex parte vide order dated 24.10.2013.

The management did not lead any evidence.

I have heard Sh. Paul.S. Saini, counsel for the management.

Since the applicant did not lead any evidence in support of her case and it cannot be said that Dharam Singh deceased was entitled to reinstatement at par with his co-employee Darshan Singh, the applicant is not entitled to any relief and the reference is accordingly answered against them. Let hard and soft copy of the award be sent to the Central Government for further necessary action.

KEWAL KRISHAN, Presiding Officer

नई दिल्ली, 4 अप्रैल, 2014

का.आ. 1246.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार इंडियन ऑयल कारपोरेशन लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, चंडीगढ़ के पंचाट (संदर्भ संख्या 10/2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 1-4-2014 को प्राप्त हुआ था ।

[सं. एल-30011/21/2009-आईआर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 4th April, 2014

S.O. 1246.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 10/2009) of the Central Government Industrial Tribunal/Labour Court No. 2, Chandigarh now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Indian Oil Corporation Limited and their workman, which was received by the Central Government on 1/4/2014.

[No. L-30011/21/2009-IR(M)]

JOHAN TOPNO, Under Secy.

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Present : SRI KEWAL KRISHAN, Presiding Officer

Case No. I.D. No. 10/2009

Registered on 29.9.2009

The General Secretary,
Petroleum Employees Union,
C/o IOCL (Lube Filling Union),
P.O. Manesar, Gurgaon ...Petitioner

Versus

The DGM (HR),
Indian Oil Corporation Ltd.
Indian Oil Bhawan,
Usuf Sarai, New Delhi. ...Respondents

APPEARANCES

For the Workman : Ex parte.

For the Management : Sh. Paul. S. Saini, Adv.

AWARD

(Passed on 21.2.2014)

Central Government vide Notification No. L-30011/21/2009-IR(M)) Dated 8.9.2009, by exercising its powers under Section 10 Sub-section (1) Clause (d) and Sub-section (2-A) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'Act') has referred the following Industrial dispute for adjudication to this Tribunal:-

> "Whether the action of Dy. General Manager (HR), IOCL (Marketing Divn.) of not promoting eligible workmen of Grade V to Grade VI, Blue Collar/White Collar to Operation Officer, Grade II, not forming Departmental Promotion Committee as per Career Progression Scheme as arrived under MOS dt.3/8/99 signed by erstwhile IBP Co. Ltd. and the union in accordance with the scheme of amalgamation of IBP Co. Ltd. with IOCL is just, fair and legal? To what relief the workmen are entitled to and from which date?"

In response the notice the workmen appeared and filed statement of claim pleading that they were the employees of IBP Company Ltd. which has been merged with IOCL Ltd. vide order dated 30.4.2007 and all the employees of the IBP Company became the employees of

the IOCL. The employees were to be given promotion etc. as per the Amalgamation Scheme which has not been implemented by the respondent management.

Respondent management filed written reply pleading that all eligible and empanelled workmen have been promoted as per the scheme and the reference is not maintainable.

Workman Union used to appear through counsel but later on it did not appear and consequently notice was again given through registered cover on 24.10.2013. On that day again no one put in appearance on behalf of workman Union and the same was ordered to be proceeded against ex parte.

Management did not lead any evidence.

I have heard Sh. Paul.S. Saini, counsel for the management.

It is the definite stand of the respondent management that it had implemented the amalgamation scheme and the workers have been promoted as per the Rules and Regulations. No evidence has been led on behalf of the Union to show that the management has not followed the provisions of Amalgamation Scheme or violated the same in any manner. Thus it cannot be said that the respondent management has not followed the scheme of Amalgamation of IBP Company Limited with IOCL.

In result, the Union is not entitled to any relief and the reference is answered against the workman Union. Let hard and soft copy of the award be sent to the Central Government for further necessary action.

KEWAL KRISHAN, Presiding Officer

नई दिल्ली, 4 अप्रैल, 2014

का.आ. 1247.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार इंडियन ऑयल कारपोरेशन लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, चंडीगढ़ के पंचाट (संदर्भ संख्या 9/2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 1-4-2014 को प्राप्त हुआ था ।

[सं. एल-30011/22/2009-आईआर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 4th April, 2014

S.O. 1247.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 9/2009) of the Central Government Industrial Tribunal/Labour Court No. 2, Chandigarh now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Indian Oil Corporation Limited and their workman, which was received by the Central Government on 1/4/2014.

[No. L-30011/22/2009-IR(M)]

JOHAN TOPNO, Under Secy.

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Present : SRI KEWAL KRISHAN, Presiding Officer

Case No. I.D. No. 9/2009

Registered on 11.9.2009

The General Secretary,
Petroleum Employees Union,
C/o IOCL (Lube Filling Union),
P.O. Manesar, Gurgaon ...Petitioner

Versus

The DGM (HR), IOCL,
Marketing Division,
Indian Oil Bhawan, No. 1,
Sri Aurobindo Marg,
Usuf Sarai, New Delhi. ...Respondents

APPEARANCES :

For the workman : Ex parte.

For the Management : Sh. Paul. S. Saini, Adv.

AWARD

(Passed on 21.2.2014)

Central Government vide Notification No. L-30011/22/2009 IR(M) Dated 3.9.2009, by exercising its powers under Section 10 Sub Section (1) Clause (d) and Sub Section (2-A) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'Act') has referred the following Industrial dispute for adjudication to this Tribunal:-

> "Whether the action of Dy. General Manager, IOCL Ltd. (Marketing Divn) in not following the provisions of scheme of Amalgamation of IBP Co. Ltd with IOCL (Marketing Divn) is just, fair and legal? To what relief the union is entitled?"

In response to the notice the workman filed statement of claim pleading that of IBP Company was amalgamated with IOCL and its employees became the employees of the IOCL w.e.f. 2.5.2007. That as per scheme of the amalgamation, the employees were to be given promotions after a minimum period but the scheme has not been adhered to by the respondent management and ignored the rights of the workmen for promotion etc.

Respondent management filed written reply pleading that all eligible and empanelled workmen have been promoted as per the scheme and the reference is not maintainable.

Workman-Union used to appear through counsel but later it did not appear and consequently notice was again given through registered cover for 24.10.2013. On that day again no one put in appearance on behalf of workman-Union and the same was ordered to be proceeded against ex parte.

Management did not lead any evidence.

I have heard Sh. Paul.S. Saini, counsel for the management.

It is the definite stand of the respondent management that it had implemented the amalgamation scheme and the workers have been promoted as per the Rules and Regulations. No evidence has been led on behalf of the Union to show that the management has no followed the provisions of Amalgamation Scheme or violated the same in any manner. Thus it cannot be said that the respondent management has not followed the scheme of Amalgamation of IBP Company Limited with IOCL. Therefore the workman is not entitled to any relief and accordingly the reference is answered against the workman-Union. Let hard and soft copy of the award be sent to the Central Government for further necessary action.

KEWAL KRISHAN, Presiding Officer

नई दिल्ली, 4 अप्रैल, 2014

का.आ. 1248.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एच.डी.एफ. सी. स्टैण्डर्ड लाइफ इन्शुरेन्स कंपनी लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, भुबनेश्वर के पंचाट (संदर्भ संख्या 58/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 1-4-2014 को प्राप्त हुआ था ।

[सं. एल-17012/5/2012-आईआर (एम)]
जोहन तोपनो, अवर सचिव

New Delhi, the 4th April, 2014

S.O. 1248.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 58/2012) of the Central Government Industrial Tribunal/Labour Court, Bhubaneswar, now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of HDFC Standard Life Insurance Company Limited and their workman, which was received by the Central Government on 1/4/2014.

[No. L-17012/5/2012-IR(M)]

JOHAN TOPNO, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT BHUBANESWAR

Present : Shri J. Srivastava, Presiding Officer, C.G.I.T.-cum-Labour Court, Bhubaneswar.

INDUSTRIAL DISPUTE CASE NO. 58/2012

Date of Passing Award – 27th February, 2014

Between :

The Manager,
Regional Human Resource,
HDFC Standard Life Insurance Company Ltd.,
794, Saheed Nagar, 3rd Floor,
Bhubaneswar, Orissa

...1st Party-Management

(And)

Their workman Shri Pradeep Kumar Samal,
S/o. Shri R.C. Samal, Plot No. 227,
Unit-9, Bhoi Nagar, Baya Baba Math Lane,
Bhubaneswar, Orissa

...2nd Party-Workman

Appearances :

None	…	For the 1st Party-Management
Shri Pradeep Kumar Samal	…	For himself the 2nd Party-Workman

AWARD

The Government of India in the Ministry of Labour has referred an industrial dispute existing between the employers in relation to the management of LIC of India and their workman in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 vide letter No. L-17012/5/2012 IR(M), dated 22.5.2012 in respect of the following matter :-

> "Whether the action of the Management of HDFC Standard Life Insurance Co. Ltd., Bhubaneswar, in terminating the services of Shri Pradeep Kumar Samal, Ex-Assistant Branch Manager vide order dated 16.6.2011 without giving proper compensation package including LTA benefits, etc. is legal and justified? What relief the workman is entitled to?"

2. In pursuance of the letter of reference the 2nd Party-workman filed his statement of claim and stated that he was appointed as Financial Planning Officer by the Management of HDFC Standard Life Insurance Company Limited on 23.8.2007 and joined the said post on the very same date at Keshari Complex Branch, Bhubaneswar. In September, 2009 he was promoted to the post of Business Development Manager and thereafter to the post of

Assistant Branch Manager in July, 2010. During the entire period of his employment he performed all his duties sincerely and satisfactorily without any stigma or adverse remark. But to his utter surprise his services were terminated with immediate effect vide letter dated 16.6.2011 issued by the Manager, Regional Human Resource, Bhubaneswar. Accordingly he was not allowed to do his duties with effect from 18.6.2011. Although the 2nd Party-workman was designated as Manager, but by nature of his duties and responsibilities he is a workman as per the definition of "workman" given under section 2(s) of the Industrial Disputes Act, 1947. At no point of time he was entrusted with any managerial or administrative work. He did not exercise any independent power and authority. He worked for more than 240 days during the last twelve calendar months, which constituted one year continuous and uninterrupted service as per provisions of Section 25-B of the Industrial Disputes Act. Refusal of employment amounts to retrenchment. Hence he is entitled to get the retrenchment compensation and benefits as provided under section 25-F of the Industrial Disputes Act and non-compliance of the provisions of Section 25-F renders his termination void-ab-nitio. The termination of his service is not only illegal, unjustified, malafide and arbitrary, but also against the principles of natural justice. The Management has turned down his request to reinstate him. Hence this reference. The Management has also violated the provisions of Section 25-G and H of the Industrial Disputes Act. As such his termination be declared as illegal and unjustified and he be reinstated with full back wages and other consequential service benefits.

3. The 1st Party-Management despite service of notice did not turn up nor filed any written statement. Hence the case was set exparte against it.

4. The 2nd Party-workman Shri Pradeep Kumar Samal in exparte evidence has filed his own affidavit and four documents in the shape of xerox copies.

5. Having heard the 2nd Party-workman and perused the evidence filed by him in support of his claim it is prima facie proved on the basis of his evidence and documents that he was appointed as Financial Planning officer by the 1st Party-Management on 23.8.2007. He served the Management for nearly four years without any break. Although he was initially appointed as Financial Planning Officer and later promoted to the post of Assistant Branch Manager, but he worked like a workman without being entrusted with any managerial and administrative power. He had rendered one year's continuous service as defined under section 25-F of the Industrial Disputes Act. Hence before termination the 1st Party-Management had to follow the provisions of Section 25-F of the aforesaid Act. But the allegation of the 2nd Party-workman is that he was terminated from service without any legal notice or payment of retrenchment compensation. In this view of the matter his retrenchment from service is illegal and unjustified. Therefore he is entitled to be reinstated in service with full back wages as proved exparte.

6. The reference is answered accordingly.

Dictated & Corrected by me.

J. SRIVASTAVA, Presiding Officer

नई दिल्ली, 4 अप्रैल, 2014

का.आ. 1249.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार नालको स्मेल्टर के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, भुबनेश्वर के पंचाट (संदर्भ संख्या 69/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 1-4-2014 को प्राप्त हुआ था ।

[सं. एल-43011/16/2011-आईआर (एम)]
जोहन तोपनो, अवर सचिव

New Delhi, the 4th April, 2014

S.O. 1249.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 69/2012) of the Central Government Industrial Tribunal/Labour Court, Bhubaneswar, now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of NALCO Smelter and their workman, which was received by the Central Government on 1/4/2014.

[No. L-43011/16/2011-IR(M)]

JOHAN TOPNO, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BHUBANESWAR

Present : Shri J. Srivastava, Presiding Officer, C.G.I.T.-cum-Labour Court, Bhubaneswar.

INDUSTRIAL DISPUTE CASE NO. 69/2012

Date of Passing Award – 26th February, 2014

Between :

1. The General Manager, NALCO Smelter, Nalco Nagar, Angul.
2. The General Manager, NALCO CPP, Nalco Nagar, Angul.
3. The Executive Director, NALCO Mines & Refinery Complex, Damanjodi, Koraput, Orissa.

4. The Secretary, Utkal Contractors' Association, NALCO Refinery Site, At./Po. Damanjodi, Dist. Koraput, Orissa.

5. The Secretary, NALCO Contractor Welfare Association, At./Po. Nalco, Dist. Angul.

...1st Party-Managements

(And)

1. The General Secretary, Alumina Mazdoor Sangh, NALCO, Damanjodi, Koraput, Orissa.

2. The General Secretary, Thika Karmachari Sangh, NALCO, Damanjodi, Koraput, Orissa.

3. The General Secretary, Koraput Alumina Shramik Sangh, NALCO, Damanjodi, Koraput, Orissa.

4. The General Secretary, Mines Thika Karmachari Sangh, NALCO Mines, Damanjodi, Koraput, Orissa.

5. The General Secretary, NALCO Industrial Workers' Union, (CITU), Nalco Nagar, Angul, Orissa.

6. The General Secretary, NALCO Thika Mazdoor Sangh (BMS), BHEL Colony, C/2, CPP NALCO Nagar, Angul, Orissa.

7. The General Secretary, NALCO Shramik Congress Union (INTUC), NALCO Smelter Plant, NALCO Nagar, Angul, Orissa.

8. The General Secretary, NALCO Nirman Mazdoor Sangh (HMS), NALCO Nagar, Angul, Orissa

...2nd Party-Unions.

Appearances:

Shri R.N. Upadhaya, A.G.M. (HRD).	...	For the 1st Party-Management No. 1 & 2.
Shri S.S. Panda, General Manager HRD.	...	For the 1st Party-Management No. 3.
Shri R.N. Rath, Auth. Rep.	...	For the 1st Party-Management No. 4
None	...	For the 1st Party-Management No. 5.
Shri Shyama Nayak. General Secretary.	...	For the 2nd Party-Union No. 2
Shri Minaketan Turuk General Secretary.	...	For the 2nd Party-Union No. 4.
None.	...	For the 2nd Party-Union No. 1, 3 and 5 to 8.

ORDER

Case taken up. Authorized representatives for the 1st Party-Management No. 1, 2, 3 and 4 are present. General Secretaries of the 2nd Party-Union No. 2 and 4 are only present. Rest of the parties are absent.

2. The 2nd Party-Union No. 1 to 8 have not filed any statement of claim despite being given more than sufficient time and a period of nearly one year and seven months has elapsed. On the last date they were asked to file the statement of claim within three weeks otherwise appropriate order will be passed in the case. Today only the 2nd Party-Union No. 2 and 4 are present and they have also not filed any statement of claim nor any time petition for adjournment has been given. The 2nd Party-Union No(s). 1, 3 & 5 to 8 did not even turn up nor sent any statement of claim nor time petition. Hence this Tribunal is constrained to pass appropriate order.

3. As the 2nd Party-Union No(s). 1 to 8 have failed to file any statement of claim despite taking time and giving sufficient opportunity and there is no occasion for the 1st Party-Managements to file any written statement this Tribunal cannot enter upon the adjudication of the matter in dispute without pleadings. Hence there is no alternative except to return the reference to the Government for necessary action at their end.

4. The reference is accordingly returned to the Government for taking necessary action at its end.

Dictated & Corrected by me.

J. SRIVASTAVA, Presiding Officer

नई दिल्ली, 4 अप्रैल, 2014

का.आ. 1250.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार डिस्ट्रिक्ट मैनेजर, भारत संचार निगम लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, कानपुर के पंचाट (संदर्भ संख्या 37/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 4-4-2014 को प्राप्त हुआ था ।

[सं. एल-40012/20/2007-आईआर (डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 4th April, 2014

S.O. 1250.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 37/2007) of the Central Government Industrial Tribunal/Labour

Court, Kanpur, now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of The District Manager, Bharat Sanchar Nigam Limited and their workman, which was received by the Central Government on 4-4-2014.

[No. L-40012/20/2007-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

BEFORE SRI RAM PARKASH, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM-LABOUR-COURT, KANPUR

Industrial Dispute No. 37 of 2007

Between :

Sri Mahendra Singh Yadav,
Son of Sri Ram Bharosey Yadav,
Through Sri Lalta Prasad Bajpai,
18/06 Sashtri Nagar, Kanpur

And

The District Manager,
Bharat Sanchar Nigam Limited,
Office of District Manager Telecom,
Etawah

AWARD

1. Central Government, MoL, New Delhi vide notification no. L-40012/20/2007 IR DU dated 23.07.2007, has referred the following dispute for adjudication.

2. Whether the action of the management of Telecom District Manager BSNL, Etawah, in terminating the services of their workman Sri Mahendra Singh Yadav with effect from 01.07.98 is legal and justified? If not what relief the workman is entitled to?

3. Brief facts are-

4. It has been alleged by the claimant that he was appointed as a Jeep Driver by the opposite party on 01.11.96. He was being paid his wages at Rs.64/- per day as casual labor by the management through voucher. As such he had been in service till 30.6.98, and he continuously worked for more 240 days preceding 12 calendar months. The opposite party without issuing any notice or notice pay and without making any retrenchment compensation terminated his services with effect from 01.07.98 orally.

5. The claimant has raised a dispute earlier wherein in I.D. Case No. 287 of 99 was registered but there being no date of termination in the said reference so the said industrial dispute was decided on23.05.06 on the basis of vague reference.

6. The claimant has been working as driver on Jeep No. UP-75-9612. He has filed the copies of the payment vouchers and other relevant record to prove his case.

7. Therefore he has prayed that it should be declared that his services were terminated illegally and he should be reinstated with consequential benefits.

8. The Opposite party has filed the written statement refuting he aversions made by the claimant. It is stated that the claimant was never appointed as a Jeep Driver by the management. It is also denied that he was being paid Rs.64/-per day. It is also denied that he has worked since 01.11.96 to 30.06.98; as such he has never completed 240 days. Other aversion has also been refuted and it is claimed that the claim of the workman is liable to be dismissed.

9. Claimant has filed several documents along with its earlier award as well as along with list 7/1-2 and 16 documents have been filed along with this list. Mostly the documents are copies of payment of vouchers.

10. Both the parties have adduced oral evidence.

11. Claimant has adduced himself as w.w.1 in its earlier case no. I.D. 287 of 99. He has also produced himself in the present UI.D as w.w.w1.

12. Opposite party has adduced M.W.1 Sri Narottam Singh in earlier I.D. No. 287/99. That statement has been taken on this file for consideration. Opposite party has also adduced Sri Mohd. Irshad M.W. 2 in the present case.

13. I have considered the oral as well as documentary evidence of both the parties adduced by them in earlier case as well as in the present case, after summoning the earlier file.

14. I am taking the statement of M.W.1 Sri Narottam Singh who is an officer of the opposite party.

15. He has stated on oath and admitted the whole case of the claimant in the examination in chief itself. He admitted that the claimant was engaged as a daily wager at the post of Jeep Driver in Nov.96 due to the death of regular driver of the department. He also admitted that the work of driver was taken from him till June 98. Thereafter he was transferred. He also admitted that he was being paid Rs.64 per day.

16. This witness was cross examined thoroughly but nothing has come out in his statement which may go against the statement of W.W.1.

17. W.W.1 has stated on oath the whole aversions made by him in the claim statement that he was appointed on 01.11.96 and worked there till 30.06.98 as driver.

18. He has proved the documents filed by him which is paper no. 7/3-19. Mostly these are the payment vouchers of the opposite party department.

19. I have gone through all these payment vouchers. There is clear indication that the claimant has worked for more than 240 days before the date of his termination i.e. 01.07.98 in a calendar year.

20. M.W.1 who has been an officer of the opposite party has also admitted this fact. W.W.1 has been cross examined thoroughly but nothing has come out to make his statement dis-believable.

21. Statement of M.W.2 is totally in contradiction of M.W.1, whereas both of them were the officers of the opposite party. Therefore, the statement of M.W.2 cannot be relied upon.

22. Therefore the statement of WW.1 coupled with the documentary evidence is acceptable and he has proved his case that his services were terminated by the opposite party without issuing any notice, notice pay or retrenchment compensation as provided under the I.D Act.

23. As such on the basis of above findings the reference is decided in favor of the claimant and against the opposite party.

24. Therefore it is held that the action of the management in terminating services of the opposite party with effect from 01.07.98 is neither legal nor justified. Consequently the workman is held entitled for his reinstatement with all consequential benefits except back wages.

25. Reference is, therefore, answered in favor of the workman and against the opposite party.

12.04.2014

RAM PARKASH, Presiding Officer

नई दिल्ली, 4 अप्रैल, 2014

का.आ. 1251.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैनेजमेंट ऑफ मिलिट्री फार्म बिन्नागुडी कैंटोनमेंट के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, कोलकाता के पंचाट (संदर्भ संख्या सीजीआईटी 13/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 4-4-2014 को प्राप्त हुआ था ।

[सं. एल-42012/03/2014-आईआर (डीयू)]
पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 4th April, 2014

S.O. 1251.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. CGIT 13 of 2012) of the Central Government Industrial Tribunal/ Labour Court, Kolkata now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Management of Military Farm, Binnaguri Cantonment and their workman, which was received by the Central Government on 4/4/2014.

[No. L-42012/03/2014-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Application No. CGIT-13 of 2012

(under Section 2A(2) of the I.D. Act, 1947)

Parties : Shri Kamal Routh,
Vill. Binnaguri Bazar,
P.O. Binnaguri,
Dist. Jalpaiguri, Pin-735203

...Applicant

Versus

Management of Military Farm,
Binnaguri Cantonment,
Dist. Jalpaiguri, Pin-735203

...Opp. Party

Present : Dipak Saha Ray, Presiding Officer

Appearance :

On behalf of the Management : None

On behalf of the Workmen : None

State : West Bengal

Dated : 21st February, 2014

AWARD

This is an application filed by one Shri Kamal Routh under Section 2A(2) of the Industrial Disputes Act, 1947 against the Management of Military Farm challenging his termination of service by the management as illegal, invalid and void ab-initio and praying for his reinstatement in service with back wages.

2. The applicant is found absent on two consecutive dates of hearing in spite of service of notice. The above conduct of the Applicant goes to show that the he is not at all interested to proceed with the case further.

In view of the above, instant application is dismissed being not moved.

Dated, Kolkata
The 21st February, 2014

Justice DIPAK SAHA RAY, Presiding Officer

नई दिल्ली, 4 अप्रैल, 2014

का.आ. 1252.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार नुक्लेअर पॉवर कारपोरेशन लिमिटेड एंड अदर्स के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, मुम्बई

के पंचाट (संदर्भ संख्या सीजीआईटी-2/11 का 2012 पार्ट-2) को प्रकाशित करती है, जो केन्द्रीय सरकार को 4-4-2014 को प्राप्त हुआ था ।

[सं. एल-42011/201/2011-आईआर (डीयू)]
पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 4th April, 2014

S.O. 1252.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. CGIT-2/11 of 2012 part-II)) of the Central Government Industrial Tribunal/Labour Court No. 2, Mumbai now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Nuclear Power Corporation Limited and Anr. and their workman, which was received by the Central Government on 4/4/2014.

[No. L-42011/201/2011-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, MUMBAI

PRESENT : K. B. Katake, Presiding Officer

REFERENCE NO. CGIT-2/11 of 2012

EMPLOYERS IN RELATION TO THE MANAGEMENT OF NUCLEAR POWER CORPORATION OF INDIA LTD. & ANR.

1. The Site Director
   M/s. NPCIL, TMS (Distt. Thane)
   Post Tapp, Via Boiser
   Distt. Thane-401 504

2. The Director (HR)
   Nuclear Power Corporation of India Ltd.
   12th floor, Vikram Sarabhai Bhavan
   Central Avenue, Anushakti Bhavan
   Mumbai-400 094.

AND

THEIR WORKMEN

Shri Avinash G. Petkar
Sahkar (DDR) Colony
Ganeshpur
Bhandara 441 904 (MS).

APPEARANCES:

FOR THE EMPLOYER	:	Mr. V. H. Kantharia, Advocate
FOR THE WORKMAN	:	Mr. A. P. Kulkarni, Advocate

Mumbai, dated the 10th March, 2014

AWARD PART-II

The Government of India, Ministry of Labour & Employment by its Order No. L-42011/201/2011-IR (DU), dated 24.02.2012 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2 (A) of Section 10 of the industrial Disputes Act, 1947 have referred the following industrial dispute to this Tribunal for adjudication :

> "Whether the action of the management of M/s. Nuclear Power Corporation of India Ltd., Tarapur, Maharashtra Site, Distt: Thane in imposing the punishment of 'dismissal from services' with immediate effect *vide* order No. TMS/TAPS 3 & 4/HR/DC/092501 dated 29/06/2009-01/07/2009 is legal and justified and in proportion to the charges of misconduct? What relief the workman is entitled to?"

2. In the Part-I Award the preliminary issues were decided in favour of the first party. It was held that the inquiry was held fair and proper. So also the findings of the Inquiry Officer were found not perverse. Therefore in this Second Part of Award the only issue before the Tribunal is:

Sr. No.	Issues	Findings
3.	Whether the punishment of dismissal from service is shockingly disproportionate to the proved misconduct?	No
4.	Whether the workman can be reinstated with full back-wages?	No
5.	What order?	As per final order.

REASONS

Issues Nos.3, 4 & 5 :-

3. The charges levelled against the second party workman Avinash G. Petkar were that on 14/11/2008 at 9 a.m. he abused and man handled Shri Pankaj Kashyap, Tradesman/C and Shri Sheikh Younus, AR Trades man/F while they were on duty in Room No. 2004 SB-106, fl. EL operating Island TAPS 3 & 4 Plant site and had violated the provisions of Section 14 (h) under Schedule I of Model Standing Orders (Central Rules) under (Industrial Employment Standing Orders) Act. He had also threatened Pankaj Kashyap that he would harm his family members. He also created panic amongst fellow employees and disturbed peaceful working condition. In the inquiry proceedings the workman has admitted the charges and the IO held him guilty for the above charges. The competent authority served the workman with notice as to why his service should not be terminated. After hearing the disciplinary authority dismissed the workman from

their services. In this respect it was argued on behalf of the workman that, punishment of dismissal from services for the misconduct of riotous behaviour and assaulting Co-worker is shockingly disproportionate.

4. The Ld. adv. for the workman submitted that lesser punishment than the dismissal would have served the purpose. In support of his argument the Ld. adv. resorted to Bombay High Court ruling in Cadbury India Ltd. V/s. V. B. Save 1996 (73) FLR 1262. In that case the Inquiry Officer therein found workman guilty of assaulting co-workman. The competent authority thus terminated the services of the workman. The Labour Court found that the Inquiry was fair and proper. However the punishment was disproportionate to the proved misconduct. Therefore the workman was directed to be reinstated with 50% of the back-wages without continuity of service. Both the parties were dissatisfied and had taken the matter in writ petition. The Hon'ble High Court in that case while confirming the order of reinstatement without back-wages with continuity of service observed that :

> "In my considered view the end of justice would adequately met if the workman is reinstated with continuity of service and deprivation of full back wages. That way he would still retein his job, not lose the benefits of continuity of service and yet have a long career before him in which he can reform himself and not repeat the activities attributed to him."

5. In this respect the Ld. adv. for the first party pointed out that it was not the first act of misconduct of the workman. Previously also there were two incidences of misconduct for which inquiries were initiated against the workman and lesser punishment was awarded so as to get opportunity to the workman to reform himself. Instead of reforming himself, the workman has repeated the misconduct of assault on the third occasion. The Ld. adv. pointed out that the workman has admitted in his cross examination at Ex-23 that in 2006 & 2008 disciplinary actions were taken against him and he was punished. The misconduct under consideration is the third act and workman has repeated the misconduct of assault on co-worker. Therefore he submitted that the ratio laid down in the above ruling is not attracted to the set of facts of the present case as on earlier two occasions, opportunity was already given to the workman to get himself reformed.

6. Furthermore the Ld. adv. also submitted that the workman was serving in Nuclear Power Corporation of India which is a very sensitive department and such type of repeated riotous behaviour and assault on Co-worker at the work place and in the residential colony should not be tolerated at all. In this respect the Ld. adv. further submitted that high standard of discipline is required to be maintained in such a sensitive department which is dealing with research and development in nuclear power. The Ld. adv. for the first party also submitted that dismissal from service no doubt causes great hardship. At the same time grave misconduct should not go unpunished and punished of dismissal from service has to be imposed to the grave misconduct. In support of his argument, the Ld. adv. resorted to Apex Court ruling in Hombe Gowda Educational Trust & Anr V/s. State of Karnataka & Ors. (2006) I SCC 430. In para 19 the judgement the Hon'ble Apex Court observed that :

> "Assaulting a superior at a workplace amount to an act of gross in discipline. The respondent is a teacher. Even under grave provocation a Teacher is not expected to abuse the head of the institution in a filthy language and assault him with a chappal. Punishment from dismissal therefore cannot be said to be wholly disproportionate so as to shock ones conscious."

7. In the case at hand neither victim herein is superior of the workman nor workman is a Teacher. The victim herein is Co-worker to whom workman had assaulted and abused at the work place and his behaviour was riotous. However in the case at hand on earlier two occasions the workman was held guilty and lesser punishment was awarded. Inspite of that he did not take any lesson and repeated the act of assault. This misconduct is third misconduct proved against the workman. Assault and riotous behaviour at the workplace in the Nuclear Power Corporation is no doubt a very serious misconduct as the said department is very sensitive and having national importance. Therefore ratio laid down in the above referred judgement would squarely attract to the case at hand.

8. In this respect Ld. adv. for the second party submitted that mere assault cannot be termed as a grave misconduct. In support of his argument the Ld. adv. resorted to Apex Court ruling in State of M.P & Ors V/s. Hazarilal 2008 II CLR 182 wherein the Hon'ble Court observed that

> "Assault by respondent Peon on an outsider not an act involving moral turpitude."

In that case as the victim was outsider the Hon'ble Court in that case held that respondent has not committed any misconduct within the meanings of the provisions of Service Rules though he was involved in a matter of causing simple injury to another person. In the criminal case he was sentenced to pay a fine of Rs. 500. After considering all these circumstances the State Administrative Tribunal held that punishment of removal from service is grossly excessive. In Writ Petition Hon'ble High Court clarified that punishment does not involve any moral turpitude and every power vested in public authority has to be exercised fairly, justly and reasonably. The Hon'ble Apex Court upheld the verdict of the High Court by dismissing the appeal. However facts in that

case were altogether different. In that case though workman therein has assaulted an outsider, he was not found guilty for any misconduct within the meaning of the provisions of Service Rules. The facts in the case at hand are altogether different than the facts of the above cited case. Therefore ratio laid down therein is not attracted to set of facts of the case at hand.

9. The Ld. adv. for the second party also resorted to another Apex Court ruling in Palghat BPL & PSP Thozhilali Union V/s. BPL India Ltd. & Anr. 1996 I CLR 368. In that case three workmen were dismissed for assaulting company's officers. The Labour Court modified the punishment and directed reinstatement with 25 % back-wages. High Court restored the order of dismissal. Apex Court took into consideration the facts that numbers of workmen were agitating by their collective bargain for aceptance of their demand and the management though initially agreed to settle in conciliation, lateron resiled form the same. In the circumstances, while confirming the order of Labour Court the Hon'bleApex Court in para 6 of the judgement observed that;

> ".....Stones were thrown and officers were attacked which resulted in grievous injuries to the officers. But it is seen that the appellants alone were not members of the assembly of the workmen standing at the BPL Bus Stop."

10. In the circumstances the Hon'ble Court held that the discretion exercised by the Labour Court under Sec. 11-A of I.D. Act is proper and justified. In that case mob of agitating workmen had pelted stones at the officers as the management had resiled from the terms which they had earlier agreed. It was the action of agitating mob of workmen, for that only three workmen were held guilty. Furthermore the members of the group were fighting for the cause of justice and welfare for all the workmen. In the circumstances ratio laid down in this ruling is not attracted to the set of facts of the case in hand where the action of assault was neither by group nor for the cause of justice as in the above referred case.

11. In this respect the Ld. adv. for the first party submitted that the act of assault on co-worker for the second time, in the premises of Nuclear Power Corporation which is a sensitive department is no doubt a grave misconduct and punishment of dismissal cannot be said shockingly disproportionate. In support of his argument the Ld. adv. for the first party resorted to Apex Court ruling in Muriadih Colliery of Bharat Cooking Coal Ltd. V/s. Bihar Colliery Kamgar Union (2005) 3 SCC 331. In that case the workman therein was dismissed from service for assaulting senior official. The Industrial Tribunal set aside the punishment of dismissal and directed reinstatement by with-holding one increment. On the point in para 1 of the judgmenet the Hon'ble Apex Court observed that;

> "The courts below by condoning an act of physical violence, have undermined the discipline in the organisation, hence, in the above factual back drop it can never be said that the Industrial Tribunal could have exercised its authority under Section 11-A of the Act to interfere with the punishment of dismissal."

12. In that case the person assaulted was senior officer whereas in the case at hand it is a co-worker. However it was an act of violence in a sensitive premises like Nuclear Power Corporation and this act of violence of assault on co-worker was the second act on the part of workman herein. Therefore it amount to grave misconduct deserving punishment of dismissal.

13. In this respect the Ld. adv. also resorted to another Apex Court ruling in Tata Engineering Locomotive Co. V/s. N.K. Singh (2006) 12 SCC 554. In this case the workman therein was dismissed from service for act of violence for assaulting the Town Warden who had gone to execute the decree alongwith Nazir of Civil Court. The Labour Court set aside the punishment of dismissal and awarded lesser punishment. High Court confirmed the said award. While setting aside the order, Hon'ble Apex Court in para 10 observed that;

"The labour and the High Court have not found that misconduct was of any minor nature. On the contrary, the finding on facts that acts complained of were established has not been disturbed. That being so, the leniency shown by the Labour Court is clearly unwarranted and would in-fact encourage in discipline. without indicating any reason as to why it was felt that punishment was disproportionate, the Labour Court should not have passed the order in the manner done."

14. In the case at hand the workman has assaulted co-worker at the workplace. It was his second incident of assault. Earlier though he was held guilty, he was given an opportunity to improve himself and lesser 'punishment was awarded to him. The act under consideration is repetition of act of assault on co-worker in the premises of Nuclear Power Corporation. Therefore the misconduct of assault has to be treated as grave misconduct for which punishment of dismissal cannot be said shockingly disproportionate. Accordingly I decide this issue no.3 in negative. Consequently I also decide this issue no.4 in the negative and proceed to pass the following order:

ORDER

The reference stands rejected with no order as to cost.

Date: 10/03/2014

K. B. KATAKE, Presiding Officer

नई दिल्ली, 4 अप्रैल, 2014

का.आ. 1253.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बंगाल

इंजीनियरिंग ग्रुप एण्ड सेंटर्स के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-II, दिल्ली के पंचाट (संदर्भ संख्या 62/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 4-4-2014 को प्राप्त हुआ था ।

[सं. एल-14012/04/2013-आईआर (डीयू)]
पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 4th April, 2014

S.O. 1253.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 62/2013) of the Central Government Industrial Tribunal/Labour Court-II, Delhi, now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Bengal Engineering Group and Centres and their workman, which was received by the Central Government on 4/4/2014.

[No. L-14012/04/2013-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, DELHI

Present : Shri Harbansh Kumar Saxena

ID No. 62/13

Sh. Manoj Kumar

Versus

Bengal Engineering Group & Centres

No DISPUTE AWARD

The Central Government in the Ministry of Labour vide notification No. L-14012/04/2013-IR(DU) dated 24.05.2013 referred the following industrial Dispute to this tribunal for adjudication :-

> 'Whether the action of Bengal Engineering Group & Centre, Roorkee in terminating the services of Sh. Manoj Kumar, Part Time Regimental Mali w.e.f 20.6.2012, in violation of provisions of Section 25 F, G, H of Industrial Dispute Act, 1947 is unjustified? What relief the workman is entitled to?

On 08/7/13 reference was received in this tribunal. Which was register as I.D. No. 62/13 and claimant was called upon to file claim statement with in fifteen days from date of service of notice. Which was required to be accompanied with relevant documents and list of witnesses.

After service of notice workman/claimant Sh. Manoj Kumar not filed claim statement but management in response to reference filed response wherein it mentioned as follows:-

1. That the above mentioned I.D. filed by the applicant is not maintainable in the eyes of Law because application made by applicant is self-contradictory due to prayer of O.A is bad in the eyes of law. Identical issue has already dismissed by Hon'ble High Court of Uttrakhand at Nainital Bench in W.P No. 644/2013 (s/s) . Copy has enclosed for the perusal of this court. Principal of res-judicata is applicable here.

2. That the above mention matter is not maintainable because this Tribunal has no jurisdiction to entertain the matter. Hon'ble Central Administrative Tribunal has the jurisdiction.

Brief facts of the case:-

(a) It is submitted here that the above named workmen has filed a case/representation dated 4.7.2012 in the office of Asst. Labour Commissioner (Central) Dehradun (UK) regarding regularization of his services. That the reply has been filed in the office of ALC Dehradun (UK) vide his office letter No-75328/thu/Civ(P) dated 18.10.2012. The payment paid to the individual every month out of non Public/Regimental Funds.

(b) That the workman was appointed as regimental Mali on the basis of contractual workman. Contract /Agreement has enclosed for the perusal of this tribunal.

(c) That the workman has paid there allowances from the welfare fund. Hence he has no right to regular there services as per rules.

(d) It is also relevant to mention here that his father was expired, after the death of his father his case was considered maximum times for appointment in respondents office & final as per rules case was turndown. Same issue was challenged before the Hon'ble high court of Uttrakhand at Nainital Bench in W.P. No. 644/2013 (s/s) and same was dismissed. Copy has enclosed for the perusal of this court. Principle of res-judicata is applicable here.

(e) That the above mentioned Case filed by the workmen/applicant is not maintainable in the eyes of law because workmen/applicant has challenged the same in I.D. No. 61/2013 principle of Res-Judicata is also applicable /Order-2 , Rule -2 , CPW Petitioner/Workmen filed a W.P. No. 644/2013, which was dismissed on 11.6.2013. Relevant /operative part of judgment is

mentioned in Para 12. Judgment State of Gujrat (L&S) 1079, 2003(1) SLJ 90 SC.

It is relevant to mention here that workman has not filed the claim statement, Hence this I.D. may be dismissed for non for prosecution or dismiss default.

PRAYER :

(i) It is therefore, respectfully prayed that I.D. of the workmen /applicant may be dismissed with the cost of litigation.

(ii) May also pass any further order(s) as be deemed just and proper to meet the ends of justice.

On the basis of aforesaid averments made by respondent. I am of considered view that workman is not at all interested in further progress of the I.D. His intension is apparent from non filing of claim statement as well as non-production of evidence by way of affidavit.

In these circumstances it is a fit case in which no dispute award may be passed.

Reference is accordingly decided.

No. Dispute Award is accordingly passed.

Dated : 28//03/2014

HARBANSH KUMAR SAXENA, Presiding Officer

नई दिल्ली, 4 अप्रैल, 2014

का.आ. 1254.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैनेजर, मै. बी.वी.जी. इंडिया लिमिटेड एण्ड अदर्स के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1, दिल्ली के पंचाट (संदर्भ संख्या 4/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 4-4-2014 को प्राप्त हुआ था ।

[सं. एल-42012/03/2014-आईआर (डीयू)]

पी. के. वेणुगोपाल, अनुभाग अधिकारी

New Delhi, the 4th April, 2014

S.O. 1254.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 4/2014) of the Central Government Industrial Tribunal/Labour Court-1, Delhi, now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of The Manager, M/s. BVG India Limited and Others and their workman, which was received by the Central Government on 4/4/2014.

[No. L-42012/03/2014-IR(DU)]

P. K. VENUGOPAL, Section Officer

ANNEXURE

BEFORE DR. R. K. YADAV, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. I, KARKARDOOMA COURTS COMPLEX, DELHI

I.D. No. 4/2014

Shri Anil Kumar
S/o Sh.Shyodan Singh,
R/o A-234, Tigri J.J.Colony,
New Delhi-110062 ....Workman

Versus

1. The Manager,
M/s. BVG India Ltd.,
510, 5th Floor, Surya Kiran Building,
19, K.G. Marg, New Delhi-110001.

2. The Medical Superintendent,
Safdarjunq Hospital,
New Delhi, ...Managements

AWARD

M/s. BVG India. Ltd. (hereinafter referred to as the Contractor) is engaged in providing mechanized housekeeping services. It mainly participates in outsourcing contracts. Contract for providing housekeeping services in VMMC and Safdarjung Hospital was obtained by the Contractor. To carry out its contractual obngations, the Contractor appointed Safai karamchari and supervisors. ShriAnil Kumar was one of the ernployees engaged by the Contractor. His services were dispensed with on 14.12.2012. He raised a demand for reinstatement in service, which demand was refuted. Ultimately, he raised a dispute before the Conciliation Officer, which dispute was also contested. Since dispute raised by Shri Anil Kumar was contested, conciliation proceedings did not result in favour of the claimant. When 45 days from the date of filing application before the Conciliation Officer stood expired, Shri Anil Kumar filed his claim before this Tribunal, while using provisions of sub-section (2) of section 2A of the Industrial Disputes Act, 1947 (in short the Act), without it being referred for adjudication by the appropriate Government under section 10(1)(d) of the Act. Since the dispute was within the period of limitation, as provided by sub-section (3) and in consonance with provisions of sub-section (2) of section 2A of the Act, it was registered as an industrial dispute.

2. Claim statement was filed by Shri Anil Kumar pleading that he was engaged by the Contractor as a clerk with effect from 01.06.2010. He worked sincerely and diligently. No attendance card, pay slip, ESI card, PF Slip, bonus, washing allowance, overtime allowance, earned leave, medical leave, casual leave were given to him. When he insisted for the aforesaid benefits,that act enraged the authorities and he was not allowed to resume his duties with effect from 15.12.2012. The Contractor terminated his

services by not allowing him to resume his duties. No charge sheet was issued to him. Neither one month notice nor pay in lieu thereof and retrenchment compensation was paid to him. Juniors to him are still employed with the Contractor and fresh appointments have also been made. Termination of services is violative of provisions of sections 25F, 25G and 25H of the Act and Rules 77 and 79 of the Industrial Disputes (Central) Rules, 1957. He claims reinstatement in service with continuity and full back wages.

3. Claim was demurred by Safdarjung Hospital (in short the Hospital) pleading that contract was awarded to the Contractor for outsourcing mechanized housekeeping services in VMMC and Safdarjung Hospital with effect from 01.01.2010 for a period of one year, which contract was further extended up to 31.05.2013. Safai karamchari and supervisors were provided by the Contractor. No provision of outsourcing of clerks was there in the contract agreement. It was the Contractor who engaged employees to discharge contractual obligations. Since the claimant is not an employee of the Hospital, he does not have any claim against it. His claim may be discarded, pleads the Hospital.

4. No written statement was filed by the Contractor. Shri Gaurav Anand, Assistant Manager (HR), made a statement on oath that services of the claimant have not been terminated till date. He is still on the rolls of the Contractor. The claimant is absent from service since 14.12.2012. On his unauthorized absence, action of termination of services has not at all been taken. The Contractor is ready to allow the claimant to join his duties with effect from 28.03.2014. Since the claimant is still in service of the Contractor, his claim under sub-section (2) of section 2A of the Act is not made out.

5. Out of facts unfolded by Shri Anand, it emerged that services of the claimant has neither been discharged, dismissed, terminated nor otherwise retrenched. When the claimant still remains on rolls of his employer, it is not a case relating to discharge, dismissal, retrenchment or otherwise termination of his services by his employer. Whether this dispute will fall within the ambit of section 2A of the Act, so that the claimant may avail provisions of sub-section (2) of the said section and seek adjudication of the dispute from the Tribunal, without it being referred for adjudication by the appropriate Government under section 10(1)(d) of the Act? Answer is plain and simple. His dispute does not fall within the purview of section 2A of the Act, since he continues to be on rolls of his employer. Machinery, provided under section 2A of the Act for resolution of disputes, relating to discharge, dismissal, retrenchment or otherwise termination of service of an employee, will not come to his rescue.

6. When the Contractor had not terminated his services at all, it is not a case wherein relief of reinstatement in service may be granted in favour of the claimant. Under these circumstances, it is evident that no cause of action accrued in favour of the claimant to invoke provisions of sub-section (2) of section 2A of the Act, to seek adjudication of the dispute. It is concluded that the dispute is not maintainable as such.

7. As concluded above, the Contractor had not taken any action to discharge, dismiss, retrench or otherwise terminate services of the claimant. Claimant is still on the rolls of his employer. Under these circumstances, relief of reinstatement in service, as claimed, is not available. Claim statement deserves dismissal. However as stated by the Contractor and conceded by the claimant in his statement made on oath, the claimant shall join his duties with effect from 28th March, 2014. With these observations, an award is passed in the matter. It be sent to the appropriate Government for publication.

Dated : 27.03.2014

Dr. R. K. YADAV, Presiding Officer

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